

STATE OF ILLINOIS )  
 ) SS.  
 COUNTY OF WILL )

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/> Modify <input type="text" value="down"/>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CHERLYN ALLEN,

Petitioner,

**14IWCC0161**

vs.

NO: 07 WC 51218

LAIDLAW TRANSIT AUTHORITY,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, and nature and extent and being advised of the facts and applicable law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission modifies the Decision of the Arbitrator and finds that Petitioner reached maximum medical improvement (MMI) as of March 12, 2009. The Commission further finds that the medical treatment after March 12, 2009 was not reasonable or necessary. The Commission awards the Petitioner 2.5% loss of use of the person-as-a-whole for her October 24, 2007 work-related injury and vacates the permanent partial disability award for the right leg.

Ms. Allen worked as a bus aide for Laidlaw. She was responsible for the safety of the kids on the bus. T.21. On October 24, 2007, Ms. Allen was sitting in the third seat of the bus when the bus was t-boned by another vehicle. T.22. She testified that her whole body was jarred and she struck her knees on the back of the seat. The seats were cushioned but there was a pole inside the seat. T.23.

Petitioner presented to Silver Cross Hospital on October 24, 2007 with complaints of bilateral knee and lumbar pain. She had low back pain and painful range of motion. The

examination revealed no sign of serious injury, but she was advised to watch for any new symptoms that might be signs of a hidden injury. PX.7. X-ray of the knees revealed bilateral degenerative changes of the patellofemoral joint. X-ray of the lumbar spine revealed degenerative changes with no evidence of an acute injury. PX.8. The diagnosis was lumbar sprain and a knee contusion/sprain. She was discharged in good condition and prescribed Naprosyn. *Id.* She was able to return to regular work. PX.7.

Petitioner completed an auto injury questionnaire prior to seeing Dr. D'Souza on October 30, 2007. She noted that the vehicle was moving slowly at the time of the accident. Her body was thrown sideways as the result of the accident. She denied losing consciousness. She had pain and stiffness in her neck, upper and lower back and lower extremity. PX.7.

Petitioner underwent an initial consultation with Dr. Melvin D'Souza on October 30, 2007. She was 6'0" and weighed 330 pounds. Ms. Allen reported that she was experiencing back pain and had a headache. She had moderate to severe neck symptoms that she described as generally achy, but occasionally sharp in nature. She described moderate to severe thoracolumbar symptoms and moderate to severe lower back symptoms. She also had moderate to severe left posterior knee symptoms, which were dull, achy and stiff in quality. She had moderate to severe right posterior knee symptoms. The primary diagnoses were cervical intervertebral disc syndrome, thoracic sprain/strain, lumbar intervertebral disc syndrome with lumbar myofascitis, and a knee sprain/strain. PX.6. Dr. D'Souza opined that Petitioner's condition was the result of the accident.

Ms. Allen treated with Dr. D'Souza thirty times and was discharged on May 6, 2008. T.25. She testified that she never specifically had treatment to her knees. *Id.* Her left knee is now okay and her right knee generally bothers her when her low back hurts. T.26. She testified that the treatment with Dr. D'Souza was not helpful in anyway. T.27.

Petitioner underwent a lumbar MRI on February 28, 2008. The MRI revealed a small disc herniation at L4-L5 that extended inferiorly with associated narrowing of the central canal. She also had disc dessication changes. PX.6.

Petitioner underwent an IME with Dr. Mukund Komanduri on March 3, 2008. Dr. Komanduri was deposed on September 17, 2009. He noted the February 28, 2008 lumbar MRI revealed a L4-L5 disc that was large enough to cause some radicular pain. It appeared to be acute and not a chronic degenerative disk. PX.12. pg.12. He opined that Petitioner was at a risk for a disk herniation because of her weight and would have a higher incident of back pain. While her weight was a contributing factor to her risk for a disk herniation, it was not the cause. PX.12. pg.13. He opined that the disc herniation was caused by the accident. *Id.* Dr. Komanduri noted that the herniation was putting some mild pressure on the thecal sac on the nerve roots, but it barely hit the nerve. The disk desiccation at L3-L4 and L4-L5 was pre-existing. PX.12. pg.23. He recommended a course of epidural injections and outpatient physical therapy. He opined that Petitioner would reach MMI in three to four months. She did not require surgery and could return to work. She was advised to avoid heavy lifting. He noted that only 4 to 6 weeks of chiropractic care was reasonable. PX.2.

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Ms. Allen was seen by Dr. Michel Malek on March 10, 2008 on referral from Dr. D'Souza. Petitioner reported that sitting, standing and walking aggravated her condition. She had no prior history of back injury. She had a negative straight leg raise and negative Patrick's maneuver. He diagnosed Petitioner with work-related lumbar radiculopathy. He recommended an epidural injection and an EMG/NCV of the bilateral lower extremities. He prescribed Ultram, Soma, and Naprosyn. She could work modified duty. PX.6.

Petitioner treated with Dr. Malek through August 3, 2009. T.27. During this period, Dr. Malek provided Petitioner with three epidural injections. Petitioner testified that the injections provided about a week of relief. Dr. Malek was deposed on August 5, 2009. He opined that Petitioner had a pre-existing degenerative condition that was silent and asymptomatic, and needed no treatment prior to the accident. Her condition became aggravated, accelerated to the point where it needed treatment beyond the natural progression following the injury. PX.13. pg.10. She was returned to work on a trial basis but that failed. PX.13. pg.12. He has not released Petitioner back to work due to her symptoms. He reviewed Dr. Butler's report and agreed that Petitioner had a sprain and strain that resolved. However, he stated that was only part of her problem and that was not her current pain. She had lumbar radiculopathy that could not be explained on the basis of a lumbar sprain or strain. PX.13. pg.15. Dr. Malek noted that the MRI findings are consistent with the clinical pathology. All this goes against a muscle sprain/strain and in favor of lumbar radiculopathy or discogenic pain. PX.13. pg.16. He conceded, however, there was no major difference between the October 24, 2007 MRI and February 28, 2008 MRI.

Petitioner underwent an IME with Dr. Jesse Butler on March 12, 2009. Dr. Butler was deposed on November 6, 2009. Examination revealed that Petitioner was 6 feet tall and weighed 390 pounds. She had a straight spine with mild tenderness to palpation of the left paraspinal muscle. No paraspinal spasms were noted. She could forward flex her hands to the distal tibia and extend 30 degrees. Neurologically she had normal strength, sensation and reflexes. She had good hip range of motion and a negative straight leg raise. He noted the MRI revealed disc dehydration at L3-L4 and L4-L5 without disc herniation. There was no significant spinal stenosis throughout the lumbar spine. There was no nerve compression throughout the lower back. RX.3. pg.9. He diagnosed Petitioner with a lumbosacral strain with ongoing back pain and intermittent tingling into the right foot. He recommended Petitioner return to work in a regular duty capacity without restriction. She was at MMI. He opined that Ms. Allen suffered a lumbosacral strain as the result of the accident and her ongoing symptoms were likely related to her morbid obesity and severe physical deconditioning. RX.3. She did not require any additional chiropractic care or treatment and did not require surgery. RX.3. pg.13. He found no evidence of symptom magnification.

Dr. Butler opined that given Petitioner had such a minimal response to the injections and the pathology on the MRI did not really show a herniation or stenosis, it was not necessary to perform three injections. RX.3. pg.22. He noted that the twenty treatments of chiropractic care were excessive. RX.3. pg.23. The additional chiropractic care from March 11, 2008 to May 6, 2008 did not make sense. RX.3. pg.24. He disagreed with Dr. Malek's opinion that riding on the bus was aggravating her condition. He further noted that her current condition was related to her obesity.

Petitioner underwent 45 chiropractic sessions with Dr. John Kravarik from March 20, 2009 through January 13, 2010. *See* PX.10. Petitioner testified that she selected Dr. Kravarik on her own. Dr. Kravarik referred Petitioner to Dr. Shameer Sharma.

On April 21, 2009, Ms. Allen was seen by Dr. Malek. Dr. Malek reviewed Dr. Butler's IME of March 12, 2009. He found Dr. Butler's IME to be invalid. Dr. Malek noted that Dr. Butler found Petitioner could return to work. However, Dr. Malek noted Petitioner tried to return to work, but could not. He took her off work. Dr. Malek noted that Dr. Butler found that Petitioner's problem is related to a muscle sprain and that her issue is morbid obesity. Dr. Malek noted that given her weight has not changed as before the accident, her weight was excluded as the cause. Dr. Malek's diagnosis remained lumbar radiculopathy with preponderance of back pain with symptoms in mid-lumbar distribution. He recommended sedentary work with no driving. PX.8.

Petitioner underwent an EMG and NCV on November 6, 2009. The test revealed no evidence of polyneuropathy in the lower extremities, no evidence of denervation in the left lower extremity muscle and no clear evidence of lumbar radiculopathy. No evidence of electrodiagnostic evidence of peroneal neuropathy or multiple mononeuropathy was seen in the left leg. PX.15.

Petitioner underwent a lumbar MRI on November 11, 2009. The MRI revealed mild multilevel degenerative changes with prominent degenerative changes centered at the posterior facets in the mid-lumbar region. The findings did not result in anything more than mild-to-moderate spinal stenosis and no more than mild neural foraminal narrowing. PX.15.

Petitioner was seen by Dr. Samir Sharma on January 13, 2010 with low back pain and lumbar radiculopathy. Her pain was primarily in the upper, mid, and lower lumbar spine. The diagnosis was low back pain and lumbar radiculopathy. Petitioner had 8 visits with Dr. Sharma. T.30. She received an injection on January 18, 2010 and February 9, 2010. T.30.

Dr. Sharma performed radiofrequency ablation (RFA) of the sacro-iliac joint strip lesion on March 19, 2010. Petitioner reported that the procedure provided 50 percent relief. PX.17. Petitioner underwent a second RFA procedure on April 7, 2010. The second procedure provided about 90 percent relief. *Id.*

William Sobodas of ATI performed an FCE on July 5, 2010. The FCE represented a valid representation of Ms. Allen's present physical capabilities. She demonstrated functional capabilities at the light physical demand level. Her current job was considered light duty. PX.24. Petitioner underwent 14 physical therapy sessions with ATI from May 12, 2010 June 17, 2010. PX.25.

Petitioner was seen by Dr. H.A. Metcalf on August 14, 2010 on referral from Dr. Sharma. Examination revealed a tender neck, and weakness of the lower back. The diagnoses were cervical sprain, thoraco lumbar sprain and L4-L5 radiculitis. He recommended physical therapy at his office three to four times a week. Petitioner treated with Dr. Metcalf twenty-five times through January 15, 2011. T.34. Petitioner reported that she was seventy-five percent better

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when she last treated with Dr. Metcalf. She was able to sit and walk around more. She was able to do more house cleaning without as much pain. T.36.

Petitioner underwent a motor nerve conduction study on August 22, 2010. The test suggested compression of peroneal motor at the ankle. It also suggested C5-C6 radiculopathy. PX.19.

Petitioner was seen by Dr. Sharma on December 17, 2010. Her symptoms had improved since the last visit. Examination revealed a normal back, normal palpation, normal sensory exam of T12 through S5, and normal muscle strength. She had full active range of motion, extension, flexion, left lateral bending, right lateral bending, left rotation, right rotation and full passive range of motion. She had a negative bilateral straight leg raise, negative valsalva maneuver, negative bilateral Faber test, and a negative piriformis stretch. The assessment was low back pain and lumbar radiculopathy. She was advised to return to work full-duty, without restrictions. PX.22.

Ms. Allen underwent a second IME with Dr. Butler on September 22, 2011. Dr. Butler noted Petitioner had no symptoms relating to her cervical spine and no issue with the cervical spine related to the accident. She required no restrictions for her neck. Dr. Butler opined that Petitioner's current lumbar condition was at her baseline level of discomfort and her current condition was not causally related to the accident. Her complaints were related to her morbid obesity and physical deconditioning. He further opined that the treatment since November 2009 had not been medically necessary for her lumbar strain. The performance of facet blocks and rhizotomies were not reasonable or necessary. She required no work restrictions for her lower back. RX.4.

The Petitioner testified that she is six feet tall and currently weighs 465 pounds. She weighed 320 pounds at the time of the first accident. While she has been obese most of her life, she has been able to clean her house on a regular basis, go shopping, walk the malls, drive on a regular basis and do a lot of walking. T.15. She did not have any prior low back issues and never had any prior medical treatment to her back. Petitioner stated that she is about 75 percent better. She takes over-the-counter muscle relaxers if she is going to perform extensive house cleaning. T.41. She has been off all pain medication since May 2012. T.36. She has to shop in moderation. She gets back pain maybe once or twice a week. T.44. She develops right knee pain if the weather changes or if she goes up or down the stairs. *Id.* Between her first accident and second accident, she had two surgeries for carpal tunnel. T.19. She stated that the bumping of the bus and the vibration irritated her back. T.38. Petitioner testified that she visited the ER 57 times between October 24, 2007 and September 7, 2012. She visited the ER 48 of the 57 times from March 16, 2009 (date of Dr. Butler's IME) through September 7, 2012. T.53.

The Commission is not bound by the arbitrator's findings, and may properly determine the credibility of witnesses, weigh their testimony and assess the weight to be given to the evidence. *R.A. Cullinan & Sons v. Industrial Comm'n*, 216 Ill. App. 3d 1048, 1054, 575 N.E.2d 1240, 159 Ill. Dec. 180 (1991). It is the province of the Commission to weigh the evidence and draw reasonable inferences therefrom. *Niles Police Department v. Industrial Comm'n*, 83 Ill. 2d 528, 533-34, 416 N.E.2d 243, 245, 48 Ill. Dec. 212 (1981). Interpretation of medical testimony is

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particularly within the province of the Commission. *A. O. Smith Corp. v. Industrial Comm'n*, 51 Ill. 2d 533, 536-37, 283 N.E.2d 875, 877 (1972). It is well established that if undisputed facts upon any issue permit more than one reasonable inference, the determination of such issues presents a question of fact, and the conclusion of the Commission will not be disturbed on review unless it is contrary to the manifest weight of the evidence. *Caterpillar Tractor Co. v. Industrial Comm'n* (1989), 129 Ill. 2d 52, 541 N.E.2d 665.

The Commission finds that the Petitioner was involved in a motor vehicle accident on October 24, 2007. Ms. Allen sustained a lumbar strain and a knee contusion as the result of the accident. In support of its finding, the Commission notes that Petitioner was discharged in good condition from Silver Cross Hospital following the accident. She was diagnosed with a lumbar sprain and a knee contusion/sprain. She was returned to regular work.

The Commission finds that Ms. Allen reached MMI as of March 12, 2009. In support of its Decision, the Commission finds the opinions of Dr. Butler more persuasive than the opinions of Dr. D'Souza, Dr. Malek, Dr. Kravarik, Dr. Sharma and Dr. Metcalf.

Dr. Butler placed Ms. Allen at MMI and noted she could return to her regular work duties as of March 12, 2009. Dr. Butler's opinions are supported by the evidence. His examination revealed a negative straight leg raise, mild tenderness to palpation of the left paraspinal muscle and no paraspinal spasms. She had neurologically normal strength and good range of motion. The Petitioner also had a negative straight leg raise during Dr. Malek's March 10, 2008 examination. Further, Dr. Butler noted that the February 28, 2008 lumbar MRI revealed disc dehydration at L3-L4 and L4-L5 without disc herniation. There was no nerve compression.

Testing after March 12, 2009 further supports Dr. Butler's MMI finding. The November 6, 2009 EMG was normal. The MRI of November 11, 2009 revealed nothing more than mild-to-moderate spinal stenosis and neural foraminal narrowing. She had a negative bilateral straight leg raise, normal strength and full range of motion during Dr. Sharma's December 17, 2010 examination. Furthermore, Dr. Butler opined that her morbid obesity was the cause of her ongoing symptoms. The Petitioner weighed in excess of 400 pounds. Dr. Komanduri testified that her weight would place her at a higher risk for back pain. Based on the lack of credible objective evidence supporting Petitioner's subjective complaints, the Commission modifies the Decision of the Arbitrator and finds Petitioner reached MMI as of March 12, 2009.

The Commission further finds that the medical treatment after March 12, 2009 was not reasonable, necessary or related to the accident of October 24, 2007. As of March 12, 2009, Dr. Butler found Petitioner had a normal neurological exam including a negative straight leg rise. There is no credible objective evidence supporting the necessity of ongoing treatment after March 12, 2009. The Commission notes that certain bills were paid by Illinois Department of Healthcare and Family Services. Those bills were for treatment received after March 12, 2009 that was not reasonable or necessary.

The Commission finds that Petitioner sustained 2.5% loss of the person-as-a-whole as the result of her injury. She did not sustain any permanent partial disability as the result of her knee injury.

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IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on April 15, 2013, is hereby modified as stated above, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$230.00 per week for a period of 12.5 weeks, as provided in §8(d)(2) of the Act, for the reason that the injuries sustained caused 2.5% loss of use of the person-as-a-whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$11,420.00 for medical expenses under §8(a) of the Act.


IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.


Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$14,300.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: MAR 05 2014

MJB/tdm  
O: 2-11-14  
052

  
Michael J. Brennan

  
Thomas J. Tyrrell

  
Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF ARBITRATOR DECISION

ALLEN, CHERLYN

Employee/Petitioner

Case# 07WC051218

12WC020058

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LIDLAW TRANSIT AUTHORITY

Employer/Respondent

On 4/15/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.09% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

1920 BRISKMAN BRISKMAN & GREENBERG  
SUSAN FRANSEN  
175 N CHICAGO ST  
JOLIET, IL 60432

1120 BRADY CONNOLLY & MASUDA PC  
LEO PLUCINSKY  
ONE N LASALLE ST SUITE 1000  
CHICAGO, IL 60602

STATE OF ILLINOIS )

)SS.

COUNTY OF Will )

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- |                                     |                                       |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/>            | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/>            | Rate Adjustment Fund (§8(g))          |
| <input type="checkbox"/>            | Second Injury Fund (§8(e)18)          |
| <input checked="" type="checkbox"/> | None of the above                     |

ILLINOIS WORKERS' COMPENSATION COMMISSION  
ARBITRATION DECISION

**Cherlyn Allen**

Employee/Petitioner

v.

**Laidlaw Transit Authority**

Employer/Respondent

Case # 07 WC 51218

Consolidated cases: 12 WC 20058

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gregory Dollison**, Arbitrator of the Commission, in the city of **New Lenox, Illinois**, on **December 17, 2012**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☐ What temporary benefits are in dispute?  
☐ TPD ☐ Maintenance ☐ TTD
- L. ☒ What is the nature and extent of the injury?
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other \_\_\_\_\_

FINDINGS

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On **10/24/2007**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned **\$12,035.40**; the average weekly wage was **\$231.45**.

On the date of accident, Petitioner was **33** years of age, *single* with **1** dependent children.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *has not* paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **\$0** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$0** for other benefits, for a total credit of **\$0**.

Respondent is entitled to a credit of **\$0** under Section 8(j) of the Act.

ORDER

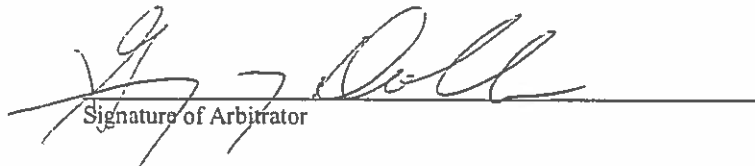
Respondent shall pay Petitioner the sum of **\$231.45/week** for a further period of 97.25 weeks, as provided in Section **8(d)2** and **8(e)** of the Act, because the injuries sustained caused **17-1/2% loss of use of man as a whole and 5% loss of use of the right leg (knee)**.

Respondent shall pay reasonable and necessary medical services of **\$80,537.21**, as provided in Section 8(a) of the Act. See the Attachment.

Respondent shall pay Petitioner compensation that has accrued from **October 24, 2007** through **December 17, 2012**, and shall pay the remainder of the award, if any, in weekly payments.

**RULES REGARDING APPEALS** Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

**STATEMENT OF INTEREST RATE** If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

  
Signature of Arbitrator

  
Date

APR 15 2013

**STATEMENT OF FACTS:**

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Petitioner was a 33 year old female, single with one child at the time of the accident. Petitioner testified that she was in good physical condition prior to October 24, 2007. She had never injured or had problems with her back before, and had been able to clean her house, go shop on a regular basis, walk, and drive without difficulty. She has been obese her entire life and on the date of hearing weighed about 465 pounds. Petitioner stated that on and before October 24, 2007, she weighed less, about 320 pounds. Petitioner provided that even though obese, she still was able to do every day activities as stated above. Petitioner had an accident on July 10, 2006 that involved her right foot and her right knee (records indicate that it was not a work accident but was from walking for eight hours at a family reunion. See Petitioner's Exhibit, hereinafter referred to simply as "PX" 29). Her back was not involved. She also had carpal tunnel releases between the accident herein, and the accident she had on September 19, 2011, both of which are not related to this claim, nor the September claim under case no. 12 WC 20058.

On October 24, 2007, Petitioner was working for Respondent from 6:30 am to 9:00 am, and from 1:15 pm to about 4:00 pm. While the bus company Petitioner worked for had two other names (Crawford and Grand Prairie-actually separate entities) before Laidlaw, Petitioner was a bus aide the entire time, going back to August, 2000. Laidlaw has now become First Student, which is irrelevant for the purposes herein.

Petitioner worked for Respondent as a bus aide. Her job duty was making sure the kids are safe and secure on the bus, i.e. to get to school and home safely. Sometimes Petitioner would sit and sometimes she would be standing, especially if there was a problem with a child.

On October 24, 2007, the bus Petitioner was working on, was involved in a motor vehicle accident, whereby the front door towards the front seat of it was struck. Petitioner testified that she was sitting on the passenger side of the bus, in the third seat from the front door. Petitioner described the impact as heavy and a T-boning type incident. Petitioner provided that her knees went into the back of the seat in front of her, and her whole body was jarred.

Post accident, Petitioner was seen at Silver Cross Hospital, where she was treated and released. After examination, Petitioner was diagnosed with back and bilateral knee contusions. (PX 29)

Petitioner utilized her first choice physician on October 30, 2007, when she saw Dr. Melvin D'Souza. (PX 6) She had 30 visits with this doctor, receiving chiropractic care, and was discharged on May 6, 2008. Id. Dr. D'Souza treated Petitioner for her lower back and her right knee. Petitioner stated that while her left knee was also struck and was painful for some time, it had resolved itself for the most part after time. Petitioner testified that her right knee bothered her when her back bothered her, and pain would radiate into her right leg.

Petitioner testified that while treating with Dr. D'Souza, her symptoms continued and the doctor referred her to Dr. Michel Malek. Petitioner started treating with Dr. Malek on March 10, 2008. She saw him nine (9) times through August 3, 2009. Not included in these visits were 3 additional visits whereby Petitioner was given epidural steroid injections on November 6, 2008, February 5, 2009 and February 19, 2009. (PX 8) Petitioner stated the injections helped temporarily, but the pain would come back after one week. Petitioner also had an MRI during this time.

Petitioner utilized her second choice physician on March 20, 2009 by commencing treatment with Dr. John Kravarik, of Will County Medical Associates. Petitioner had 45 visits with this chiropractor, ending on January 13, 2010. (PX 10) Dr. Kravarik referred Petitioner, during this time, to Dr. Shameer Sharma, a pain and spine physician.

By prescription of her doctors, Petitioner had an EMG on November 6, 2009, an MRI on November 11, 2009, both at done Provena Saint Joseph Medical Center, and an FCE on July 5, 2010. (PX 15, PX 25)

Petitioner had 8 visits with Dr. Sharma, not including injections and procedures he performed. On January 18, 2010 and February 9, 2010, Petitioner received more injections, but this time from Dr. Sharma. (PX 17) In March and April of 2010, Petitioner described a procedure done by Dr. Sharma, whereby a laser pen was used to remove the arthritis in her lower sacrum. (PX 17) Petitioner testified that she started to feel better after the procedure.

Petitioner testified that before Dr. Sharma treated her, she had pain in her lower back five out of seven days. She took Norco, muscle relaxers, Soma and Ibuprofin. Petitioner stated that prior to her second work accident, she went to the emergency room at Silver Cross Hospital fourteen times for pain management. (Also see PX 29)

Dr. Sharma referred Petitioner to ATI for work conditioning and physical therapy. She treated there from May 14, 2010 to June 17, 2010. (PX 24) Petitioner testified that this medical care was making her feel worse. As a result, Dr. Sharma referred her for different therapeutic/chiropractic care with Dr. Metcalf. She treated with this doctor from August 14, 2010 to January 15, 2011 for a total of 25 visits. (PX 21) Petitioner stated that as of January 15, 2011, she was feeling about 75% better. She was able to sit more, walk around more, and start doing house cleaning without as many pills and as much pain.

Petitioner stated that as of the date of her testimony, she was only taking over the counter Tylenol once or twice a week, going back to May, 2012. She also provided that she was restricted from working on the bus from September, 2008 to April 9, 2009 as the "bumping of the bus" or vibration of the same was irritating her back.

On September 19, 2011 Petitioner had another accident while working for Respondent. (See case no. 12 WC 20058 for the Facts Section regarding this incident). After this accident, Petitioner visited the ER at Silver Cross Hospital two more times, on December 22, 2011 and March 9, 2012. Her main complaints of pain on these visits were her right leg (only on December visit) and back. (PX 29)

Petitioner testified that the aggravation of the injuries she sustained in her October, 2007 accident, in the accident involved herein, resolved. She however has many problems in her daily life activities, part of which may have been impacted with this second accident. Petitioner provided that walking (especially around the mall) still bothered her. She can walk approximately four blocks before the pain begins. She continues to try to do it and get better. Petitioner stated that she takes over-the-counter medication before she attempts significant house cleaning chores. Shopping can only be done in moderation. Petitioner testified that she gained about 120 pounds since the initial accident she sustained in 2007. Petitioner provided that she "can't walk like I use too." She stated the "pain medication would put me out." She would not take them before work, but after, and then eat and go to sleep. Her activity level was very low. She stated that it was only after treatment with Dr. Sharma that her daily activities have gotten better.

As to complaints Petitioner still has today, she testified that she still gets back pain one to two times a week. She still gets right knee pain with weather changes or if she is going up and down stairs a lot. She also has had swelling in her bilateral legs, but does not know if this particular symptom is from either work accident she had. She also has been at regular work for Respondent since April 6, 2009.

**In support of the Arbitrator's findings relating to (F), is the Petitioner's present condition of ill-being causally related to the accident/injury of October 24, 2007, the Arbitrator finds the following:**

The Arbitrator finds that a causal relationship exists between her conditions of ill-being and the accident sustained on October 24, 2007.

The Arbitrator finds that Petitioner was credible in her testimony and said testimony was unrebutted. Evidence submitted suggests Petitioner was in fairly good health, although she was obese, prior to the this work accident. There is no evidence in the record that Petitioner ever had problems with her lower back or her left knee until she sustained the work accident involved herein. Petitioner admitted to injuring her right knee in an accident at work on July 10, 2006, but limited records are available as to this, and Petitioner was working full duty after the same. The work accident itself is stipulated to/undisputed.

After the accident of October 24, 2007, Petitioner went to Silver Cross Hospital where she mainly complained of bilateral knee, and lumbar pain. A laceration was also found on Petitioner's right hand, and numbness and tingling in the right forearm. (PX 29) The Arbitrator makes specific note that several hospital visits were entered as part of this exhibit, prior to this accident, going back to July 10, 2006. Petitioner had full range of motion as to her back region, and all exams of the same were normal. There were obviously no preexisting back conditions. On the date of the accident herein, Petitioner had x-rays taken of her lumbar spine, and bilateral knees, which were essentially normal except for degenerative changes, and she was discharged the same day. Id. Petitioner was given Vicodin while at the hospital, and upon being released was given prescriptions for Naprosyn and Flexeril. Id.

On October 30, 2007, Petitioner exercised her first choice physician and started treating with Dr. Melvin D'Souza of St. Anthony's Spine and Joint Institute. (PX 6) Her main complaints were her entire lumbar spine and her bilateral knees. Dr. D'Souza ordered a course of physical therapy which lasted until May 6, 2008, for a total of 30 visits.

While treating with Dr. D'Souza, Petitioner had bilateral knee complaints until November 27, 2007. After this date, her main problem was her entire back, but primarily in the lumbar region. In a two page questionnaire filled out on January 3, 2008, Petitioner indicated that her lifting, walking, sitting, standing, sleeping, sex life, social life and traveling were affected by her lower back injury. Upon reevaluation by Dr. D'Souza on this date, it was determined that only Petitioner's neck and back were the injuries of concern with the neck improving. Petitioner was referred for an MRI and to Dr. Michel Malek for pain management. (PX 6) Chiropractic care/physical therapy continued.

On March 15, 2008, Petitioner was again reevaluated and answered another questionnaire. She was getting worse at this point as to her lower back. Petitioner's last visit with Dr. D'Souza was on May 6, 2008, whereby her pain was slowly improving but still prominent. She was treating at this time with Dr. Malek. Dr. D'Souza's last diagnoses of the Petitioner, found in the note of 1/3/08, were basic strain sprain type injuries to the lumbar region and the cervical region, but with acknowledgment that further testing and care was needed. (PX 6)

Petitioner began treating with Dr. Michel Malek on March 10, 2008. After taking her history, Dr. Malek noted that the pain in Petitioner's back was intolerable with radiation down both extremities to about the knee with tingling and numbness and weakness down the left side. Petitioner's upper back and neck were still somewhat painful. (PX 8 and PX 13, at 6-7) A MRI was performed on 2/28/08 which, according to Dr. Malek, showed evidence of desiccation at the L3-4 and L4-5 levels of her lumbar spine. There was also evidence of some retrolisthesis of L4 on L5. (PX 13, at 7-8) His diagnosis of Petitioner was lumbar radiculopathy consistent with her MRI findings. (PX 8 and PX 13, at 9) Dr. Malek prescribed Ultram, a muscle relaxant and anti-inflammatory. Epidural injections were to be considered. (PX 8) Petitioner was given modified duty at work. Per her testimony Petitioner continued to work full duty at this time. (See PX 11, notes from Dr. Malek for the time Petitioner did not work on the bus and was on modified duty and the note that Dr. D'Souza issued that authorized Petitioner off work in March 11, 2008)

On April 23, 2008, Petitioner was reevaluated by Dr. Malek, and he noted she was miserable. Bilateral L3-4 and L4-5 foraminal epidural injections were prescribed, along with an EMG/NCV lower extremities. He continued her Ultram, Soma and Naprosyn prescriptions. (PX 8) Petitioner did not return to Dr. Malek until September 3, 2008 and it was noted that upon returning to work after the summer, her condition was aggravated. Her low back pain was still present and Dr. Malek's prescription was the same. Id.

Petitioner had her first epidural injection on November 26, 2008 with Dr. Malek. It was uneventful. She followed up with Dr. Malek on December 3, 2008 and two additional injections were recommended as Petitioner had a partial response to the first one. These were done on February 4, 2009 and February 18, 2009. After the second injection, Petitioner had a reaction with headaches. This required a visit at the emergency room on February 12, 2009 at Silver Cross Hospital. The Arbitrator notes that this treatment is not disputed and the resulting ER visit is related. (PX 8 and PX 29)

On March 11, 2009, Petitioner returned to Dr. Malek for follow-up. He noted that she had an IME set with Dr. Jesse Butler the next day, but was still having pain in her back to her lower extremities. He recommended an EMG/NCV and another MRI. He thought Petitioner should continue treatment with Dr. D'Souza. He was still awaiting the IME report on April 8, 2009. (PX 8)

Petitioner exercised her second choice physician by going to Dr. John Kravarik of Will County Chiropractic & Rehabilitation. (PX 10) His care was to replace that of Dr. D'Souza. Petitioner treated with Dr. Kravarik from March 20, 2009 to January 13, 2010 for a total of 45 visits. Id. Per Dr. Malek, this care was reasonable and necessary for treatment of Petitioner's symptoms as further medical care was not authorized. (PX 13)

Dr. Kravarik provided therapy in the form of EMS, heat, and intersegmental traction. He also gave authorization for Petitioner to be off work completely. He noted continuously that Petitioner still had pain, spasm, numbness and tingling, all stemming from her lumbar region and traveling into her legs. Petitioner also had a decreased range of motion. (PX 10) The Arbitrator finds this care reasonable and necessary and causally related to the accident of October 24, 2007. Per Dr. Malek, and even Dr. Komanduri to an extent (see below), Petitioner needed therapy while testing and care was denied. The Arbitrator finds Petitioner's current condition at this time, related to the accident herein. The Arbitrator notes Petitioner's testimony that Dr. Kravarik's care helped her and she demonstrated improvement.

Petitioner returned to Dr. Malek on April 21, 2009. He had reviewed Dr. Butler's IME report at this time and did not agree with Dr. Butler's opinions. Dr. Butler indicated that Petitioner's problems were weight related and deconditioning. Dr. Malek unequivocally stated that this cannot be the cause of Petitioner's symptoms as

her weight was the same before the accident as it was when he was treating her. (PX 8 and PX 13) The Arbitrator notes that Dr. Malek is credible in his opinions. The Arbitrator further notes that Petitioner was on modified duty during this time (September, 2008 to April, 2009). This is not an issue in the Decision herein as this was stipulated to by the parties.

On August 3, 2009, Petitioner returned to Dr. Malek. He noted that Petitioner was seeing Dr. John Kravarik instead of Dr. D'Souza, and Petitioner reported that this was helping her significantly. Dr. Malek could not give any further recommendations at this time as Petitioner still needed to have the MRI and EMG NCV done. This was the last time Dr. Malek saw Petitioner. (PX 8) Petitioner in fact had these tests done at Provena Saint Joseph Medical Center on November 6, 2009 and November 11, 2009. The EMG was essentially normal and the MRI the same. (PX 15)

Dr. Michel Malek testified in this case. He is a board certified Neurological Surgeon in good standing. He gave the opinion, based on a reasonable degree of medical and neurological certainty that "at the time of 10/24/07 Mrs. Cheryl Allen already had pre-existing degenerative condition that was silent and asymptomatic and needed no treatment, but as a result of the injury [here], that condition became symptomatic by aggravation, acceleration, or precipitation to the point where it [became] in need of treatment beyond the natural progression of degenerative disease absent the injury [herein]." (PX 13, at 10) He further opined (as stated above) that weight is not a factor in this case as the day before the accident Petitioner was fine, and after, symptomatic. (PX 13, at 10-11)

Dr. Malek testified that the three epidural injections, identified above, were reasonable and necessary, and incurred because of the accident Petitioner had on October 24, 2007. (PX 13, at 11-12) In addition, Dr. Malek had Petitioner on sedentary restrictions as of the last visit. (PX 13, at 13-14) While not significant for TTD herein, as that is not an issue, it is relevant for the purpose of demonstrating Petitioner's determination to work beyond these restrictions, and goes to her credibility. Finally, Dr. Malek testified that his final diagnosis, as of August 3, 2009 was "lumbar radiculopathy, mid lumbar in distribution with preponderance of back pain with MRI scan showing L3/L4, L4/L5 pathology. And failure of conservative management. I do believe as well that [Ms. Allen] had muscular ligamentous strain that has resolved and no longer a factor in her pain." (PX 13, at 14) The Arbitrator finds Dr. Malek's opinions credible and relies on these. The Arbitrator further finds that as of August 3, 2009, Petitioner met her burden and proved that her current condition was causally related to the accident of October 24, 2007.

Due to Petitioner's ongoing complaints to her lower back, Dr. John Kravarik, who was providing chiropractic care/therapy, referred Petitioner to a pain management specialist, Dr. Samir Sharma. (PX 17 and PX 18) Petitioner presented to Dr. Sharma on January 13, 2010. While the lower back was Petitioner's main complaint, she was still having trouble throughout her spine. Id. She was also still having radiating pain, with stiffness, numbness in the legs, and weakness of the legs. After initial examination, where Dr. Sharma found positive results, he diagnosed Petitioner with low back pain and lumbar radiculopathy. Id. He prescribed a Facet diagnostic medial branch block of the sacral L4, L5, S1, S2, S3 medial branch nerves under fluoroscopic guidance. The only history that Dr. Sharma related this to was Petitioner's work accident of October 24, 2007. Id.

On January 18, 2010, Petitioner had the injection, as described above, completed. It was uneventful. Id. Petitioner returned for follow-up on February 9, 2010 and reported 75% improvement. Another injection was done on this day. Id. Petitioner had another follow-up on February 24, 2010 where she now reported 90% relief. She was still taking Flexeril, Norco and Naproxen. Id. She also had pain that remained with extended walking. Id. Due to this, Dr. Sharma prescribed a Radio-Frequency Ablation of the medial branch nerves of the Sacro-

Iliac Joint strip lesion, under fluoroscopic guidance. Id. This was a more permanent solution to Petitioner's ongoing nerve problems and pain complaints. Id. This procedure was done on March 19, 2010 (approach from the right side) and April 7, 2010 (approach from the left side). Id.

Petitioner followed up again with Dr. Sharma on May 5, 2010 and June 22, 2010 and reported a 90% improvement again. She still felt muscle spasms in the low back. Id. After refilling Petitioner's Flexeril medication, Dr. Sharma referred Petitioner to ATI for physical therapy. She was to follow up with the doctor after completing this. Id.

Petitioner began first work hardening at ATI on May 14, 2010, and had five (5) sessions of this. (PX 24) After this last fifth session, regular physical therapy in the form of E-stim, Hot/Cold Packs, Manual Therapy, and Therapeutic Exercises were done. Petitioner had nine (9) such sessions, the last one ending on June 17, 2010. Id. Petitioner testified that this treatment was not too helpful to her and she felt an increase in her pain and radicular symptoms.

Petitioner had an FCE on July 5, 2010. As Petitioner is not claiming any lost time from work, or a change in her vocation, this test is of little value. Nevertheless, the FCE was deemed valid with Petitioner demonstrating a functional capacity at the light physical demand level. (PX 25)

When Petitioner returned on July 21, 2010 to Dr. Sharma, as stated above, she had a gradual return of the radicular symptoms into her right lower extremity, that had disappeared after the last RFA. Rather than continue at ATI for physical therapy, Dr. Sharma referred Petitioner to Dr. Metcalf for an alternative type of therapy and placed her on work restrictions. (PX 17 and PX 18)

Petitioner first saw Dr. H. Metcalf on August 14, 2010. (PX 21) She had therapy on this date and on August 19, 20, 21 (with an EMG/NCV done on this date suggestive of a C5-6 radiculopathy), 24, 25, 26, 28; on September 2, 9, 10, 16, 17, 18, 23, 24, 25, 28, 30; on October 6, 7, 8, 12, 13, 2010; and was discharged with much improvement on January 15, 2011. Id. Petitioner testified that this chiropractic care helped her quite a bit and she was able to completely stop taking any type of medications for pain. She was also back to work full duty and had been since the beginning of the school year.

Petitioner also had follow up with Dr. Sharma on August 9, 2010 (feeling 95% improvement), September 28, 2010 (PX 17), and December 17, 2010 (PX 22). As of the December visit, Petitioner was MMI and was only to return to the doctor on a p.r.n. basis. (PX 22) A refill of Norco was given to Petitioner. Per her testimony she stopped taking all prescription medications shortly after this time. Dr. Sharma's final diagnosis was low back pain and lumbar radiculopathy. Id.

Petitioner was examined by two physicians on behalf of Respondent. Petitioner did not testify about Dr. Mukund Komanduri, but his report is part of the record as (PX 2) Dr. Komunduri's report unequivocally stated that Petitioner has a "clinically significant L4-5 disc herniation" which is work related. Id. He stated that epidural injections and work restrictions are related and reasonable. Id. Finally, he stated that Petitioner had radiculopathy. He did not state that Petitioner's weight was in any way a factor. Id. His testimony was also taken. (PX 12) He testified that on March 3, 2008, when he saw Petitioner, due to her lack of symptoms prior to the accident of October 24, 2007, he did not feel that her condition was chronic. (PX 12, at 10) He examined her and found a positive straight leg test. Id, at 11. He reviewed the MRI films of February 28, 2008, and found the disc herniation at L4-5, aka, said disc putting mild pressure on the thecal sac on the nerve roots. Id, at 12-13. He opined that this condition and the need for the injections, was directly caused by the work accident of October 24, 2007. (PX 12)

Dr. Jesse Butler also examined Petitioner on two occasions and his testimony was taken. Dr. Malek read Dr. Butler's initial IME report after an examination of 3/12/2009 and testified that while Petitioner did sustain a strain/sprain, as was Dr. Butler's opinion, this resolved and only a radiculopathy was left. He further indicated that Dr. Butler had no explanation for the radicular symptoms and no explanation for the fact that the epidural injections provided some partial and temporary relief. He noted that if Petitioner only had a strain/sprain, these would not have impacted her at all. When posed as to whether Petitioner's weight was the cause of her symptomology, the doctor replied, "...this is a common cop-out for people, ...I would ask Dr. Butler did the accident of 10/24/07 cause a weight gain that resulted in pain. She was the same weight before and after. Mrs. Allen on 10/23/07 wasn't a thin person and yet she did not have pain. So why would the accident of 10/27/07 all of a sudden cause pain because of obesity which was there before. It doesn't really make sense." (PX 13, at 15-17)

Dr. Butler testified in this matter regarding his two visits with Petitioner, March 12, 2009 (RX 1) and September 22, 2011 (RX 4). Petitioner testified that he never examined her in the latter. His opinions remained unchanged between the March, 2009 and September, 2011 visits. He testified that Petitioner had a strain of her cervical and lumbar region and these were resolved as of March 12, 2009. (RX 3, at 13) On cross examination, Dr. Butler admitted he did not know Petitioner had a prior IME with Dr. Komunduri. Id, at 18. Further, Dr. Butler stated he had no reason to doubt Petitioner when she indicated that she had radicular pain. Id, at 19. He also testified that all treatment (besides some excessive chiropractic sessions) was reasonable, necessary and related to the accident of October 24, 2007. Id, at 23-24. When asked about Petitioner's weight, Dr. Butler assumed on the date of accident she weighed 330 pounds, but had been 265 pounds shortly before that as that was what was indicated on Petitioner's drivers' license. Id, at 25. Finally, Dr. Butler stated that being a bus monitor was a sedentary job and would not in any way aggravate a person's back, who had sustained injury. Id, at 24.

Petitioner admitted that she had been to the emergency room at Silver Cross Hospital on several occasions for her back pain. Records show she went there on the date of the accident, on 1/8/08, on 2/12/09 and 2/13/09, all of which have been stipulated as related to the accident involved herein. Arb. Exh. 5. After this time, Petitioner went back to Silver Cross Hospital on 6/22/09, 9/9/09, 9/16/09, 9/22/09, 2/8/10, 3/8/10, 7/17/10, 7/20/10, 7/22/10, 3/30/11, 8/20/11, 9/19/11 (for other work accident which is stipulated to also), 12/22/11, and 3/9/12. (PX 29) Upon review of the medical records of the hospital, the Arbitrator finds these visits related to the accident of October 24, 2007 as Petitioner was treated for chronic lower back pain in each of them.

Based on all the above, the Arbitrator finds that Petitioner's condition of ill-being as defined by Dr. Malek, Dr. Komunduri, and Dr. Sharma is causally related to the work injury she sustained on October 24, 2007. The Arbitrator is not persuaded by the opinions of Dr. Butler.

**In support of the Arbitrator's findings relating to (J), were the medical services that were provided to the Petitioner reasonable and necessary, and were they paid, the Arbitrator finds the following facts:**

The Arbitrator finds that Respondent is liable for the medical services that were provided to the Petitioner as they were reasonable and necessary, and related to the accident of October 24, 2007.

Respondent stipulated that an accident occurred in the course of Petitioner's employment with Laidlaw Transit. However, there are bills not paid. Based on records and reports from Dr. D'Souza, Dr. Malek, Dr. Kravarik, Dr. Sharma, Dr. Metcalf, and Dr. Komunduri, the company IME, the medical bills from the treatment are awarded.

Petitioner's Exhibit 4, a medical bill from EM Strategies, was admitted into evidence for treatment rendered at the emergency room at Silver Cross Hospital where Petitioner went on August 20, 2011 with complaints of low back pain. The Arbitrator therefore awards Petitioner the amount of this bill or \$319.00. It is noted that this bill is awarded but Respondent will pay according to the fee schedule or \$242.18.

Petitioner's Exhibit 5 is a medical payment lien from the Illinois Department of Healthcare and Family Services in the amount of \$3,017.08 for various dates of care Petitioner has had and for medications disbursed, which is all related to the accident herein. The Arbitrator therefore awards Petitioner the amount of this lien/bill or \$3,017.08. It is noted that any charges that are reflected on other bills awarded as stated in this decision, will mean a credit to Respondent from this award of the IDHFS lien amount.

Petitioner's Exhibit 7 is a medical bill from Dr. Michel Malek in the amount of \$7,386.98 for treatment Petitioner received from Dr. Malek. For the reasons stated above and herein, the Arbitrator awards Petitioner the amount of this bill or \$390.00. Per the stipulation of the parties, Arbitrator Exhibit 5, Respondent has already agreed to pay for \$6,996.98 of the bill submitted. The Arbitrator awards the remaining balance for the three visits that occurred after March, 2009. It is noted that this bill is awarded but Respondent will pay according to the fee schedule or \$265.50.

Petitioner's Exhibit 9, a medical bill from Will County Chiropractic & Rehabilitation Center, was admitted into evidence for treatment rendered by Dr. John Kravarik. This bill is from care the Arbitrator has awarded as related to Petitioner's work accident. The Arbitrator therefore awards Petitioner the amount of this bill or \$9,292.00. It is noted that this bill is awarded but Respondent will pay according to the fee schedule.

Petitioner's Exhibit 14, a medical bill from Provena Saint Joseph Medical Center, was admitted into evidence for testing done at said hospital per order of Dr. Malek. This bill is from care the Arbitrator has awarded as related to Petitioner's work accident. The Arbitrator therefore awards the Petitioner the amount of this bill or \$4,140.00. It is noted that this bill is awarded but Respondent will pay according to the fee schedule.

Petitioner's Exhibit 16, a medical bill from the Pain & Spine Institute, was admitted into evidence for treatment rendered by Dr. Sharma. This bill is from care the Arbitrator has awarded as related to Petitioner's work accident. The Arbitrator therefore awards Petitioner the amount of this bill or \$28,109.00. It is noted that this bill is awarded but Respondent will pay according to the fee schedule.

Petitioner's Exhibit 19, a medical bill from Equi-Med, was admitted into evidence for medications given to Petitioner as prescribed by Dr. Malek. This bill is from care the Arbitrator has awarded as related to Petitioner's work accident. The Arbitrator therefore awards Petitioner the amount of this bill or \$815.05. It is noted that this bill is awarded but Respondent will pay according to the fee schedule.

Petitioner's Exhibit 20, a medical bill from Dr. H. Metcalf, was admitted into evidence for treatment rendered by Dr. Metcalf. This bill is from care the Arbitrator has awarded as related to Petitioner's work accident. The Arbitrator therefore awards Petitioner the amount of this bill or \$13,190.21. It is noted that this bill is awarded but Respondent will pay according to the fee schedule.

Petitioner's Exhibit 23, a medical bill from ATI Physical Therapy, was admitted into evidence for therapy performed as by prescription of Dr. Sharma. This bill is from care the Arbitrator has awarded as related to Petitioner's work accident. The Arbitrator therefore awards Petitioner the amount of this bill or \$6,064.67. It is noted that this bill is awarded but Respondent will pay according to the fee schedule.

Petitioner's Exhibit 26, a printout of medications Petitioner has received, related to this accident, was admitted into evidence. No award is necessary.

Finally, Petitioner's Exhibit 28, a medical bill from Silver Cross Hospital, was admitted into evidence for emergency room visits Petitioner had. This bill is from care the Arbitrator has awarded as related to Petitioner's work accident. The Arbitrator therefore awards Petitioner the amount of this bill or \$15,200.00. It is noted that this bill is awarded but Respondent will pay according to the fee schedule.

The total to be paid by Respondent to Petitioner is \$80,537.21, subject to the fee schedule.

**In support of the Arbitrator's findings relating to (L), what is the nature and extent of the injuries the Petitioner sustained, the Arbitrator finds the following facts:**

For the reasons as stated above and herein, the Arbitrator finds that Petitioner met her burden of proving she was permanently disabled as to her lower back to the extent of 17-1/2% loss of use of man as a whole, and to the extent of 5% loss of use of her right leg/knee. Petitioner has had three epidural injections by Dr. Malek, and two injections and two RFA procedures as performed by Dr. Sharma. She testified that she has never been the same since this accident happened in that her walking is curtailed, her house cleaning more difficult, and every day activities can be painful without over-the-counter medications. While working full duty, every other aspect of Petitioner's life has been modified to accommodate the injury sustained to her lower back region. The Arbitrator has considered this in his award and finds Petitioner credible in her testimony.



STATE OF ILLINOIS )  
 ) SS.  
 COUNTY OF LA SALLE )

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input checked="" type="checkbox"/> Reverse <u>Causal connection</u>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MARIA LUNA,

Petitioner,

vs.

NO: 12 WC 15073

14TWCC0162

GROUP O,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, prospective medical treatment and temporary total disability benefits, and being advised of the facts and law, reverses the Decision of the Arbitrator as stated below. The Commission remands this case to the Arbitrator for further proceedings for a determination of an additional amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

It is undisputed that Petitioner injured herself while working for Respondent on February 20, 2012. She fell and injured her right shoulder, arm, wrist and knee. Petitioner immediately sought medical attention and continued treatment for those conditions until they resolved. Petitioner's right shoulder, arm, wrist and knee are not at issue.

The Arbitrator held that Petitioner's low back condition was causally connected to her work related accident on February 20, 2012. The Arbitrator awarded Petitioner temporary total disability benefits for 36-1/7 weeks, from May 15, 2012 through January 23, 2013, medical expenses of \$961.00, and prospective medical treatment.

14IVCC0162

The Commission reverses the decision of the Arbitrator and finds that Petitioner's lumbar spine condition is not causally connected to the work related accident. We therefore do not award Petitioner medical expenses or prospective medical treatment. However, we award Petitioner temporary total disability benefits for 6-2/7 weeks, from May 15, 2012, through June 27, 2012, when Petitioner treated for issues related to the her right shoulder, arm, wrist and knee, which she injured during the work related accident and which are causally connected to said accident.

Petitioner alleged she injured her low back, not during the original accident but as a direct result of her other injuries. We find that Petitioner did not prove her low back complaints were causally connected to the work accident. While Petitioner originally injured herself on February 20, 2012, she did not voice back complaints until May 15, 2012, nearly three months after the accident. Petitioner's initial medical records contain no complaints of low back pain. She even testified that she did not initially experience low back pain but later claimed that it was a result of her other injuries. Petitioner suggests that her knee complaints traveled up to her low back and caused her additional pain. However, we question Petitioner's credibility. During her testimony, Petitioner answered questions regarding the origin of her low back complaints evasively. On cross examination, when Petitioner was asked if she hurt her back on February 20, 2012, she responded that she fell on her right side and "[t]here is a consequence of that too." Then after being accused of being evasive, Petitioner admitted that she did not hurt her back on February 20, 2012. Petitioner's testimony was not fully credible.

Moreover, the evidence shows that Petitioner is exaggerating her symptoms and that she is not experiencing as much pain as she claims. None of the medical providers could relate Petitioner's subjective complaints of pain to any objective finding. Respondent's Section 12 report from Dr. Graf points out multiple times that he cannot relate Petitioner's pain complaints to her physical exam or any other objective evidence. Petitioner's own treating physicians stated in multiple records that her pain is diffuse and cannot be explained by objective testing. Dr. Sterbe evaluated Petitioner for her shoulder complaints on June 21, 2012, and he wrote that he cannot explain her diffuse pain that does not relate to objective testing. Dr. Mathew wrote in his June 29, 2012, note that the MRI findings of her lumbar spine do not show evidence of nerve root impingement that could explain her severe pain. Dr. Matthew added that her pain is definitely out of proportion and does not correspond with the MRI findings. Even Petitioner's own treating physicians cannot explain her diffuse pain complaints based on objective testing and her physical exam. Petitioner appears to be malingering and exaggerating her symptoms.

Therefore, we hold that Petitioner's low back condition is not causally connected to her work related injury. She did not complain of any back issues until almost three months after the initial work injury. When she did begin treating for her lumbar spine condition, Petitioner's treating physicians and Respondent's Section 12 examiner could not explain her diffuse complaints of severe pain. Multiple physicians suggested that Petitioner was malingering and exaggerating her symptoms. Therefore, Petitioner is not entitled to prospective medical treatment

14IWCC0162

for her low back, medical expenses or temporary total disability benefits while treating exclusively for her low back.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's decision is reversed with respect to Petitioner's lumbar spine. Petitioner's lumbar spine condition is not causally connected to the work related injury and benefits with respect to that condition are denied.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of \$416.60 per week for a period of 6-2/7 weeks, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

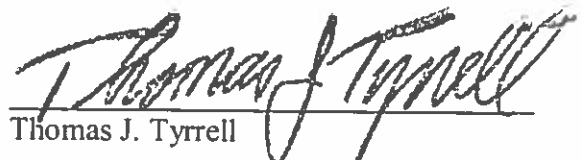
Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$100.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

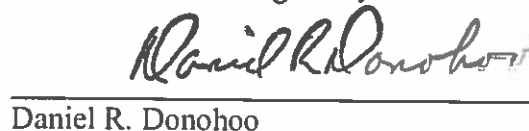
DATED: MAR 06 2014


TJT: kg

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Thomas J. Tyrrell

  
Daniel R. Donohoo

  
Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF 19(b) DECISION OF ARBITRATOR

**LUNA, MARIA**

Employee/Petitioner

Case# **12WC015073**

**GROUP O**

Employer/Respondent

14IVCC0163

On 4/25/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

4642 O'CONNOR & NAKOS LTD  
MATT WALKER  
120 N LASALLE ST 35TH FL  
CHICAGO, IL 60602

1337 KNELL & KELLY LLC  
CHARLES D KNELL  
504 FAYETTE ST  
PEORIA, IL 61603

STATE OF ILLINOIS )

)SS.

COUNTY OF LaSalle )

- |                                     |                                       |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/>            | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/>            | Rate Adjustment Fund (§8(g))          |
| <input type="checkbox"/>            | Second Injury Fund (§8(c)18)          |
| <input checked="" type="checkbox"/> | None of the above                     |

ILLINOIS WORKERS' COMPENSATION COMMISSION  
ARBITRATION DECISION  
19(b)

Maria Luna

Employee/Petitioner

Case # 12 WC 15073

v.

Consolidated cases: n/a

Group O

Employer/Respondent

14IWCC0162

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gregory Dollison**, Arbitrator of the Commission, in the city of **Ottawa, Illinois**, on **January 23, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

**DISPUTED ISSUES**

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ Is Petitioner entitled to any prospective medical care?
- L. ☒ What temporary benefits are in dispute?  
☐ TPD ☐ Maintenance ☒ TTD
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other \_\_\_\_\_

**FINDINGS**

On the date of accident, **February 20, 2012**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned **\$32,494.80**; the average weekly wage was **\$624.90**.

On the date of accident, Petitioner was **40** years of age, *single* with **0** dependent children.

Respondent *has not* paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **\$8,497.73** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$0** for other benefits, for a total credit of **\$8,497.73**.

Respondent is entitled to a credit of **\$0** under Section 8(j) of the Act.

**ORDER**

Respondent shall pay Petitioner temporary total disability benefits of \$416.60/week for 36-1/7 weeks, commencing May 15, 2012 through January 23, 2013, as provided in Section 8(b) of the Act. Respondent shall be given a credit of \$8,495.73 for temporary total disability benefits that have been paid.

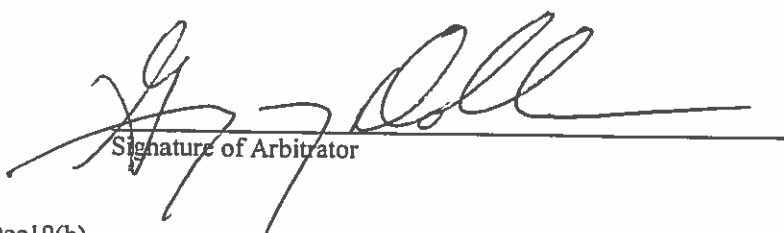
Respondent shall pay reasonable and necessary medical services of \$961.00, as provided in Sections 8(a) and 8.2 of the Act. All other medical bills as put forth in Petitioner's Exhibit #6 have been paid by Respondent.

Respondent shall authorize prospective medical as recommended by Dr. Mathew in her chart note of June 29, 2012, that being "a diagnostic and therapeutic right L4 and L5 epidural steroid injection to be followed by a return to work with limitations to Petitioner's spine and left shoulder if needed, or a functional capacity evaluation depending on the results of the injection."

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

**RULES REGARDING APPEALS** Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

**STATEMENT OF INTEREST RATE** If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

  
Signature of Arbitrator

  
Date

ICArbDec19(b)

APR 25 2013

14EWCC0162

**Statement of Facts:**

Petitioner has been employed by Respondent since October 18, 2010. Respondent is a temporary agency that provides workers for Caterpillar. Petitioner worked at the Caterpillar plant in Montgomery, Illinois. On February 20, 2012, Petitioner was employed as an inventory specialist at the Caterpillar Plant in Montgomery. For the approximate one year and three months that Petitioner worked for Respondent she had various jobs. Group O places at various stages parts for the building of Caterpillar equipment. At the time of the occurrence she was working in inventory. Part of her job was to check part numbers, the location of the part number and the quantity. She would work in six or seven areas during the day. During her job she would climb ladders, operate a scissor lift and also operated a standup forklift. The parts that she might lift during the day would vary from less than a pound up to fifty pounds.

Petitioner testified that on February 20, 2012 she performed inventory in several different areas. As she was walking towards area PL-178, she tripped on a rock in the designated walkway. Petitioner stated that she twisted her left ankle, and fell onto the right side of her body. Petitioner provided that she put her right arm out to avoid striking a metal box when she fell. Immediately after the fall, she noted that her pants had ripped and that her knee was hurting. She also had grease all over her pants and on her hands. She went into the bathroom to clean herself and checked her leg on the right side. She had some scratches on her right knee.

Petitioner testified that she reported the work accident to her supervisor, Maria Ramirez. After a safety investigation, Petitioner was sent by Respondent to Provena for medical treatment.

On February 20, 2012, Petitioner presented to Provena Mercy Center where she was seen by Dr. Charles G. Woodward. Records show that Petitioner's chief complaints were right knee pain, right shoulder pain and right wrist pain. Petitioner provided that she stepped on a rock, inverted her ankle and fell on her right side. Petitioner also indicated that she fell with an outstretched hand. X-rays taken of the right wrist and right knee were both negative for acute bony pathology. Petitioner was assessed with multiple contusions secondary to fall. She was prescribed an icing program, and returned to restricted work, sitting only. (PX 1) Petitioner testified that her restrictions were accommodated.

Petitioner continued to follow up with Provena Occupational Health. On March 5, 2012, Petitioner presented complaining of ongoing right knee pain, swelling and instability. Petitioner also complained of right shoulder pain at the anterior superior aspect of the shoulder. A MRI of the right knee was ordered and her work restrictions were continued. (PX 1)

Petitioner underwent the right knee MRI on March 12, 2012. The study showed osteoarthritic changes involving the knee joint and patellofemoral joint with some articular cartilage changes of the patellofemoral joint. The findings were suggestive of some injury to the proximal aspect of the lateral collateral ligament. Same was felt to represent a strain rather than disruption. (PX 1)

Petitioner returned to the Occupational Health Clinic on March 14, 2012. At that time, physical therapy was prescribed. Her restrictions were changed to no lifting over 20lbs, no ladder climbing, ambulation as tolerated and use of the right arm as tolerated. Her diagnosis was contusion/sprain right knee and right shoulder strain. (PX 1)

Petitioner continued treating at the Occupational Health Clinic through April 23, 2012. At that time, Petitioner complained of worsening right shoulder pain. She also complained of continuing right knee pain.

Petitioner was referred to "Orthopedics" for further evaluation and treatment of the right shoulder pain and knee pain due to "the chronicity of her symptoms and failure to progress with conservative treatment." Petitioner was placed on restrictions of no lifting over 10 pounds with the right arm, no pushing or pulling over 10 lbs., no climbing vertical ladders, ambulation as tolerated and use of the right arm as tolerated. (PX 1) Respondent continued to accommodate her restrictions.

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On May 4, 2012, Petitioner was seen by Dr. Aaron Bare, an orthopedic surgeon, at Orthopedic Associates of DuPage. Dr. Bare noted that Petitioner was a "280 pound, 40 year old female who works in inventory. She sustained an injury on 2/20/2011. She was working as an inventory counter. She slipped as she was walking. She believes she stepped on a rock. Her left leg twisted. She lost balance and fell on her right side. As she fell she extended the right arm and the hand. As she rolled to the ground, she believes she struck the right knee and right shoulder on the pavement." Petitioner complained of right sided numbness; problems with overhead reaching and lifting of the right shoulder and occasional numbness down the right leg. Petitioner denied any neck pain or radicular symptoms. Dr. Bare diagnosed Petitioner with a "right knee exacerbation of medical compartment osteoarthritis and right shoulder tendinitis." Dr. Bare noted that Petitioner "does have very diffuse complaints, especially in and around the leg and the knee that appear not to be isolated to a certain compartment or certain location. She has pain down the entire leg..." He recommended continued physical therapy for both the knee and the shoulder. At that time, he anticipated a return to full duty work over the course of the next two months. The doctor also noted that if physical therapy did not improve her symptoms, a follow-up with physiatry was warranted. Petitioner was continued on light duty restrictions. (PX 2)

Petitioner testified that on May 14, 2012 she was required to work full duty. Petitioner testified that when she started working full duty she noticed pain in her back and groin. She also provided that her leg was getting numb and she had terrible pain, rating same at 10/10.

On May 15, 2012, Petitioner returned to Orthopedic Associates of DuPage where she was observed by Dr. Vinita Mathew. Petitioner provided that "...yesterday her supervisor made her do regular job with weight restrictions. She therefore had to lift tubes weighing about 20 pounds up to 60 times as she works 8 hours a day. She also had to walk all around doing inventory..." Petitioner relayed that due to the repetitive motion, her right shoulder and knee pain became severe. Petitioner also reported groin pain and right knee pain that radiated up the lateral thigh into the buttocks. Petitioner described the pain in her thigh as a burning sensation which caused intermittent numbness. Petitioner further complained of some low back pain. It was noted the pain did not radiate below the knee. Petitioner was assessed with 1.) hip - osteoarthritis; 2.) lumbar spondylolisthesis - acquired; 3.) knee pain; 4.) shoulder pain; and 5.) rotator cuff syndrome. It was noted that Petitioner's right thigh and knee pain was probably due to lumbar radiculitis and the hip osteoarthritis also contributed to the pain. Dr. Mathew wrote, "I explained to the patient that she has a significant spondylolisthesis, which can contribute to lumbar spinal stenosis. That could result in lumbar radiculitis or sciatica. This could explain some of the nonspecific burning and numbness that she has in the thigh. In addition, to the lateral thigh pain, she also reports groin pain on the hip range of motion. Hip range of motion also reproduces the knee pain. I therefore believe that her knee pain is multifactorial. There is an element of lumbar radiculitis, hip pathology and local knee pathology all contributing to the pain. She also has an acute exacerbation of pain which is activity based." Dr. Mathew placed Petitioner on restrictions of light duty with no lifting or carrying in excess of 20 pounds, no bending, twisting or standing for prolonged periods, and a work limit of only up to 4 hours per day. Dr. Mathew continued Petitioner in physical therapy, prescribed anti-inflammatory medical and advised to ambulate with a cane. (PX 2)

The next visit took place on May 21, 2012. Dr. Mathew noted Petitioner reported an onset of numbness radiating from the right buttocks down the calf. She reported low back pain, mainly in the buttocks, that radiates down the "whole leg." Petitioner described burning pain associated with tingling. Petitioner reported that although she continued with right shoulder pain, her main concern was her leg pain. Dr. Mathew felt that

because Petitioner presented with more neuropathic symptoms in her right leg, a MRI of the lumbar spine was warranted to evaluate for lumbar nerve root impingement. Dr. Mathew took Petitioner off work, continued her in physical therapy, and recommended proceeding with a diagnostic and therapeutic epidural steroid injection after obtaining the MRI. (PX 2)

The MRI of the right hip was performed on May 25, 2012. It was unremarkable. Petitioner followed up with Dr. Mathew on June 5, 2012. Dr. Mathew noted that the hip MRI was ordered by Work Comp, and that she had ordered an MRI of the lumbar spine. Dr. Mathew explained in her chart note that Petitioner's exam was consistent with lumbar radiculitis probably due to lumbar stenosis caused by the spondylolisthesis seen in the x-rays. Dr. Mathew went on to opine that "[l]umbar stenosis is usually a chronic condition, but the injury probably made an otherwise asymptomatic condition symptomatic." In addition to the exam on June 5, 2012, Dr. Mathew injected Petitioner's right shoulder with 1cc of Celestone 6 mg mixed with 2cc of Marcaine 0.5%. Petitioner was continued on light duty restrictions. (PX 2)

A MRI of the right shoulder was done on June 12, 2012. It revealed moderate tendinosis of the supra and infraspinatus tendons with ill-defined interstitial delaminated tearing involving only 30 to 40% of the tendon cranio-causal thickness. The radiologist also documented mild to moderate tendinosis and low grade partial interstitial delaminated tearing of the subscapularis, with a small intrasubstance ganglion cyst at the myotendinous junction. There was mild osteoarthritis of the AC joint with lateral downsloping, mild subacromial subdeltoid bursitis, and fibrillation of the superior labrum. Minimal medial perching of the long head biceps tendon was noted adjacent to the lesser tuberosity. (PX 2)

Records submitted show Dr. Mathew reviewed the MRI. In a noted dated June 14, 2012, Dr. Mathew recommended that Petitioner follow up with Dr. Sterba for further shoulder treatment recommendations. On June 15, 2012, Dr. Mathew continued to recommend a lumbar MRI. The doctor noted that "If MRI is not done in 1 week, I can't put her off work further without any evidence, as pain is subjective and investigations so far don't explain the severe leg pain." (PX 2)

Petitioner presented to Dr. William Sterba on June 21, 2012. He noted a 40-year-old, morbidly obese female referred for evaluation of right shoulder pain that had been ongoing since February 20<sup>th</sup>. He charted symptoms including a painful, burning sensation in the front of the shoulder, along with numbness and tingling down the arm into the fingers. On examination Petitioner complained of diffused pain symptoms and signs throughout the exam. Petitioner pointed to anterolateral shoulder, lateral shoulder, top of shoulder, paracervical spine and rotating over to the left side. Dr. Sterba reviewed the right shoulder MRI and questioned the MRI report that suggested that there was no dislocation of the biceps tendon. The doctor felt that there may be a subtle amount of subluxation into the superior border of the subscapularis tendon. Dr. Sterba assessed right shoulder pain of unclear etiology. He recommended Petitioner remain off work until he had the opportunity to discuss further workup with Dr. Mathew. Dr. Sterba stated Petitioner had symptoms that were above and beyond that which would be explained from her biceps tendon. He could not explain the subjective tingling and numbness that she had going down into the hand with respect to the shoulder complaint. (PX 2)

A MRI of the lumbar spine was performed on June 25, 2012. It revealed 3mm anterolisthesis with bilateral L5 spondylosis at L5-S1. Mild disc bulging with superior extension of the disc into each neural foramen was noted. Moderate left foraminal stenosis with mild flattening of the exiting left L5 nerve root was documented. Also at L5-S1 was mild to moderate right foraminal stenosis without right L5 nerve root impingement, along with a small right posterolateral disc protrusion without neural impingement. At L4-5, there was a small right foraminal disc protrusion with minimal right foraminal stenosis and no nerve root impingement. At L3-4, there was a small left foraminal disc protrusion without stenosis. (PX 2)

On June 29, 2012, Dr. Sterba reported that after conferring with the radiologist regarding the right shoulder MRI, he did not have good evidence to support that Petitioner's pathology was coming from the shoulder. He stated that her pain was so diffused that he would have great reservation in suggesting surgical intervention. (PX 2)

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Petitioner returned to see Dr. Mathew on June 29, 2012. Dr. Mathew charted that Petitioner's back pain was worse. Dr. Mathew also noted that Dr. Sterba would defer from recommending any surgical intervention to the shoulder due to Petitioner's diffuse complaints not limited to shoulder movements. Dr. Mathew informed Petitioner that the MRI revealed small, right-sided disc protrusions at L4-5 and L5-S1 along with a chronic listhesis at L5-S1 which could irritate the exiting right L4 and L5 nerve roots. There was no evidence of nerve root impingement that could explain her severe pain. Dr. Mathew noted that the pain was out of proportion and did not correspond to the MRI findings. Dr. Mathew provided that her only recommendation at that time was a diagnostic and therapeutic right L4 and L5 epidural steroid injection. Dr. Mathew also noted that an FCE may be required to evaluate the validity and reliability of Petitioner's symptoms and to assess her functional capabilities. Dr. Mathew took Petitioner off work until 2 weeks after the lumbar epidural steroid injections could be performed. (PX 2)

On July 17, 2012, Petitioner called to request a referral for a second opinion. On August 17, 2012, Dr. Mathew recommended Petitioner see DuPage Medical Group spine surgeons Dr. Paul or Dr. Matagaras for a second opinion.

At Respondent's request, Petitioner saw Dr. Carl Graf for a Section 12 examination on November 7, 2012. Dr. Graf is a Board Certified Orthopedic Spinal Surgeon, a Fellow of the American Academy of Orthopedic Surgery and a Diplomat of the American Board of Orthopedic Surgeons. Dr. Graf took a history from Petitioner, performed a physical examination of Petitioner's cervical spine, did a neurological evaluation, did a shoulder examination, a lumbosacral evaluation, and a neurological evaluation of the lower extremities. He reviewed medical records from the initial date of accident of February 20, 2012 of Dr. Woodward from Provena, reviewed additional medical records from Provena through the end of April of 2012 and further reviewed Dr. Bare's records concerning his evaluation of the right shoulder and right knee. He also reviewed medical records from Dr. Mathew from an office of May 15, 2012 pertaining to her complaints of back pain. Additional records of Dr. Mathew were reviewed concerning treatment to the low back as well as the MRI that was performed.

Dr. Graf concluded as follows:

"Ms. Maria Luna is a 41-year-old female who claims injury in February of 2012. Ms. Luna has multiple subjective complaints of shoulder pain, arm pain, back pain, bilateral leg pain, hip pain and knee pain. It should be clearly noted that there was no report of back pain, with her injury solely being a wrist, knee and strained shoulder. It is evident that Ms. Luan presented to see a physiatrist, Dr. Vinita Matthew at which time she was given multiple diagnoses including that of hip osteoarthritis, acquired lumbar spondylolisthesis, knee pain, shoulder pain and rotator cuff syndrome, in addition to lumbar radiculitis.

On physical examination Ms. Luna demonstrates an examination with pain out of proportion and multiple nonorganic pain signs. Her subjective complaints of pain cannot be objectively substantiated given the lack of objective findings. Further, her multiple nonorganic pain signs bring forward the likelihood of symptom magnification and/or fabrication.

Regarding Ms. Luna's lumbar spine, there is no evidence of any complaints initially following the evaluation for many months. Therefore, it is my opinion that this be considered outside of the claim. Further, I am unable to substantiate her subjective complaints of pain given the lack of objective findings. Again, the number of nonorganic pain signs and gross pain out of proportion brings forth the likelihood of symptoms and/or fabrication.

Regarding the lumbar spine, it is my opinion that there is no objective reason why Ms. Luna is unable to return to her full duty level job without restriction. It is further my opinion that there is no permanency regarding her lumbar complaints.

#### SPECIFIC INTERROGATIVES

1. What is the current diagnosis, and how does it relate to the 02/20/12 injury? Are her current subjective complaints related to any pre-existing condition or related to the injury sustained on 02/20/12?

Answer: Ms. Luna has multiple diagnoses outside of the realm of this independent medical evaluation, that of the spine. She has multiple complaints of pain regarding the cervical and lumbar spine which cannot be objectively substantiated. She does have a preexisting lumbar spondylolysis at L5. This would not cause her various and diffuse complaints of pain.

2. What are your treatment recommendations as relates to the injury sustained on 02/20/12?

Answer: Again, I am unable to substantiate Ms. Luna's still complains of pain given the lack of objective findings. It is my opinion she is at maximum medial improvement.

3. Is this injured worker capable of working her full duty activities. If not, is she capable of working modified duty? With what restrictions?

Answer. Regarding the lumbar spine, it is my opinion that there is no objective reason why Ms. Luna cannot return to her full duty job without restrictions.

4. When will this injured worker reach maximum medical improvement for the injury sustained on 02/20/12?

Answer: Essentially, it is my opinion that this is not applicable, as it is my opinion that Ms. Luna's lumbar complaints are in no way related to the injury in question. If it is somehow deemed that her lumbar complaints are related to the injury in question, it is my opinion she would be considered at maximum medical improvement at this point." (RX 12, RX 13)

On November 13, 2012, Petitioner was seen by Dr. Paul at DuPage Medical Group. Dr. Paul noted the following: Petitioner is a 41 year old female, who complains of severe back pain with bilateral lower extremity radiating pain after a work injury on February 20, 2012. She reports that she fell on her right side landing on her shoulder/hip. For this, went to see Dr. Bare/Dr. Mathew who referred her to an orthopedic surgeon from OAD-Dr. Sterba. She was treated conservatively for her right shoulder/hip/knee. She describes her pain as constant,

stabbing, burning pain across the back/buttock, which has not changed since the fall. She finds she has occasional shooting pain and numbness down the hips/sometimes groin/front/back of both legs into the feet, Left greater than right. She denies weakness with climbing stairs or walking, however is in pain. She was ordered an MRI of her lumbar spine with shows B pars defects at L5/S1/G1 anterolisthesis, as a result has mild to moderate central neuroforaminal stenosis from a disc herniation which favors the left side. She was offered PT for core stabilization, ROM and gait training. She found little relief with this, and in fact some days her pain seemed wors[e]..." After performing an examination and reviewing diagnostic studies, Dr. Paul had the following impression: Lumbar spine: Lumbar Herniated disc, Lumbar Spinal Stenosis and Spondylolisthesis, Degenerative. Dr. Paul's plan was to try a round of lumbar epidural steroid injections at L5-S1. Dr. Paul also briefly reviewed an L5-S1 lumbar decompression with fusion, but no surgical recommendations were made on November 13, 2012. (PX 4)

Petitioner testified that she is continuing to seek treatment using her group insurance, and is scheduled to see Dr. Espinosa and Dr. Hejna in the near future.

**With respect to (F.) IS PETITIONER'S CURRENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY, the Arbitrator finds as follows:**

The dispute in the matter centers around whether Petitioner's low back condition of ill-being is causally related to the accident on February 20, 2012. The record is clear Petitioner did not specifically complain of low back pain until May 15, 2012 when she was seen by Dr. Mathew at the Orthopedic Associates of DuPage. At that time Petitioner provided that "...yesterday her supervisor made her do regular job with weight restrictions. She therefore had to lift tubes weighing about 20 pounds up to 60 times as she works 8 hours a day. She also had to walk all around doing inventory..." Petitioner relayed that due to the repetitive motion, her right shoulder and knee pain became severe. Petitioner also reported groin pain and right knee pain that radiated up the lateral thigh into the buttocks. Petitioner described the pain in her thigh as a burning sensation which caused intermittent numbness. Petitioner further complained of some low back pain. It was noted the pain did not radiate below the knee. Petitioner was assessed with 1.) hip – osteoarthritis; 2.) lumbar spondylolisthesis – acquired; 3.) knee pain; 4.) shoulder pain; and 5.) rotator cuff syndrome. It was noted that Petitioner's right thigh and knee pain was probably due to lumbar radiculitis and the hip osteoarthritis also contributed to the pain. Dr. Mathew wrote, "I explained to the patient that she has a significant spondylolisthesis, which can contribute to lumbar spinal stenosis. That could result in lumbar radiculitis or sciatica. This could explain some of the nonspecific burning and numbness that she has in the thigh. In addition, to the lateral thigh pain, she also reports groin pain on the hip range of motion. Hip range of motion also reproduces the knee pain. I therefore believe that her knee pain is multifactorial. There is an element of lumbar radiculitis, hip pathology and local knee pathology all contributing to the pain. She also has an acute exacerbation of pain which is activity based."

Prior to that visit Petitioner saw Dr. Bare, one of her treating physicians, who noted that Petitioner complained of pain down "the entire leg" accompanied by "complaints of burning in the front of and back of the knee" on May 4, 2012. He also noted "occasional numbness down the right leg."

On her next visit with Dr. Mathew on May 21, 2012, Petitioner reported an onset of numbness radiating from the right buttocks down the calf. She reported low back pain, mainly in the buttocks, that radiates down the "whole leg." Petitioner described burning pain associated with tingling. Petitioner reported that although she continued with right shoulder pain, her main concern was her leg pain. Dr. Mathew felt that because Petitioner presented with more neuropathic symptoms in her right leg, a MRI of the lumbar spine was warranted to evaluate for lumbar nerve root impingement. Dr. Mathew took Petitioner off work, continued her in physical therapy, and recommended proceeding with a diagnostic and therapeutic epidural steroid injection after obtaining the MRI.

Petitioner followed up with Dr. Mathew on June 5, 2012. Dr. Mathew explained in her chart note that Petitioner's exam was consistent with lumbar radiculitis probably due to lumbar stenosis caused by the spondylolisthesis seen in the x-rays. Dr. Mathew went on to opine that "[l]umbar stenosis is usually a chronic condition, but the injury probably made an otherwise asymptomatic condition symptomatic."

A MRI of the lumbar spine was performed on June 25, 2012. It revealed 3mm anterolisthesis with bilateral L5 spondyloysis at L5-S1. Mild disc bulging with superior extension of the disc into each neural foramen was noted. Moderate left foraminal stenosis with mild flattening of the exiting left L5 nerve root was documented. Also at L5-S1 was mild to moderate right foraminal stenosis without right L5 nerve root impingement, along with a small right posterolateral disc protrusion without neural impingement. At L4-5, there was a small right foraminal disc protrusion with minimal right foraminal stenosis and no nerve root impingement. At L3-4, there was a small left foraminal disc protrusion without stenosis.

Petitioner returned to see Dr. Mathew on June 29, 2012. Dr. Mathew informed Petitioner that the MRI revealed small, right-sided disc protrusions at L4-5 and L5-S1 along with a chronic listhesis at L5-S1 which could irritate the exiting right L4 and L5 nerve roots. There was no evidence of nerve root impingement that could explain her severe pain. Dr. Mathew noted that the pain was out of proportion and did not correspond to the MRI findings. Dr. Mathew provided that her only recommendation at that time was a diagnostic and therapeutic right L4 and L5 epidural steroid injection. Dr. Mathew also noted that an FCE may be required to evaluate the validity and reliability of Petitioner's symptoms.

To obtain compensation under the Act, a claimant must prove that some phase of her employment was a causative factor in her ensuing injuries. *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill.App.3d 582, 592 (2005). An accidental injury need not be the sole or principal causative factor, as long as it was a causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill.2d 193, 205 (2003).

Dr. Graf served as Respondent's Section 12 examining physician. Dr. Graf wrote that there was "no evidence of any complaints initially following the evaluation for many months" as it relates to Petitioner's lumbar spine. He further noted that he was unable to substantiate her subjective complaints of pain given the lack of objective findings.

Petitioner's treating physician, Dr. Mathew, has opined that the knee pain that has been present since the date of injury is due to multiple pathologies, to include lumbar stenosis, which Dr. Mathew charted was probably made symptomatic as a result of the work injury. Dr. Graf did not comment on Dr. Mathew's opinion that the knee pain was the result of multiple pathologies. He merely noted that complaints of back pain did not occur for "many months".

The Arbitrator finds the opinion of Dr. Mathew to be persuasive. The fact that the knee is the result of multiple pathologies to include issues with Petitioner's lumbar spine is reasonable in light of Petitioner's mechanism of injury and consistent complaints of knee and leg pain since the date of the work accident. The Arbitrator finds that based upon the mechanism of injury as described by Petitioner, the medical records, and the opinions of Dr. Mathew, Petitioner has proven by a preponderance of credible evidence that her condition is related to the work accident that occurred on February 20, 2012.

**With respect to (J.) WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY? HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES, the Arbitrator finds as follows:**

Relying on the findings in issue (F.), the Arbitrator finds that all of the medical services provided to Petitioner has been reasonable and necessary. The Arbitrator awards medical bills as follows:

- Dr. Roselia Herrera: \$530.00
- DuPage Medical Group: \$431.00

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These bills are to be paid in accordance with the Illinois Workers' Compensation Act Fee Schedule. The Arbitrator notes that the bills from Provena Mercy Medical, OAD Orthopedics and ATI Physical Therapy were paid by Respondent.

**With respect to (K.) IS PETITIONER ENTITLED TO ANY PROSPECTIVE MEDICAL CARE, the Arbitrator finds as follows:**

Petitioner is in the midst of a conservative course of treatment with Dr. Mathew. Both Dr. Mathew and Dr. Graf note concern over Petitioner's subjective complaints exceeding the objective findings in this claim. In light of these concerns, Dr. Mathew has recommended additional conservative management for Petitioner's lumbar complaints in the form of a "diagnostic and therapeutic right L4 and L5 epidural steroid injection." Dr. Mathew noted that if this failed to improve Petitioner's symptoms, then a functional capacity evaluation could be done in order to evaluate "the validity and reliability of her symptoms and to assess her functional capabilities." This recommended course of treatment should address any concerns that Petitioner is magnifying her complaints of pain.

The Arbitrator awards prospective medical care as recommended by Dr. Mathew in the form of a diagnostic and therapeutic right L4 and L5 epidural steroid injection to be followed by a return to work with limitations to Petitioner's spine and left shoulder if needed, or a functional capacity evaluation depending on the results of the injection in accordance with Dr. Mathew's recommendations on June 29, 2012.

**With respect to (L.) WHAT TEMPORARY BENEFITS ARE IN DISPUTE (TEMPORARY TOTAL DISABILITY BENEFITS), the Arbitrator finds as follows:**

A claimant is temporarily and totally disabled from the time an injury incapacitates him from work until such time as he is as far recovered or restored as the permanent character of her injury will permit. *Archer Daniels Midland Co. v. Industrial Comm'n*, 138 Ill.2d 107 (1990). To be entitled to TTD benefits, it is a claimant's burden to prove not only that he did not work, but also that he was unable to work. *Interstate Scaffolding, Inc. v. Illinois workers' Compensation Comm'n*, 236 Ill.2d 132, 148 (2010).

Petitioner is still off work per the recommendations of Dr. Mathew and Dr. Paul. Petitioner is entitled to temporary total disability benefits from May 15, 2012 thru the date of the hearing on January 23, 2013 for a total of 36-1/7 weeks. Respondent is entitled to a credit for TTD already paid in the amount of \$8,495.73.

STATE OF ILLINOIS       )  
                                       ) SS.  
 COUNTY OF WINNEBAGO   )

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Craig B. Baker,

Petitioner,

14IWCC0163

vs.

NO: 12 WC 02688

Con-Way Freight, Inc.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, the nature and extent of Petitioner's disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 18, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

14IWCC0163

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$36,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED:

MAR 07 2014

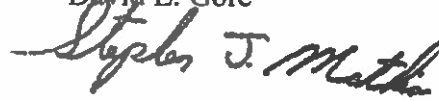
DLG/gal

O: 3/6/14

45



David L. Gore



Stephen Mathis

  
Mario Basurto

ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF ARBITRATOR DECISION

**BAKER, CRAIG B**

Employee/Petitioner

Case# 12WC002688

14IWCC0163

**CON-WAY FREIGHT INC**

Employer/Respondent

On 6/18/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.07% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0563 WILLIAMSMcCARTHY LLP  
JOHN J SHEPHERD  
120 W STATE ST SUITE 400  
ROCKFORD, IL 61105-0219

0507 RUSIN MACIOROWSKI & FRIEDMAN LTD  
MARK P RUSIN  
10 S RIVERSIDE PLZ SUITE 1530  
CHICAGO, IL 60606-3833

STATE OF ILLINOIS )  
 )SS.  
COUNTY OF Winnebago )

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION  
ARBITRATION DECISION

14IWCC0163

Craig B. Baker  
Employee/Petitioner

Case # 12 WC 2688

v.

Con-Way Freight, Inc.  
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Anthony C. Erbacci**, Arbitrator of the Commission, in the city of **Rockford**, on **May 17, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☐ What temporary benefits are in dispute?  
☐ TPD ☐ Maintenance ☐ TTD
- L. ☒ What is the nature and extent of the injury?
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other

## FINDINGS

14IWCC0163

On **October 21, 2011**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned **\$49,863.32**; the average weekly wage was **\$958.91**.

On the date of accident, Petitioner was **43** years of age, *married* with **0** dependent children.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *has* paid all appropriate charges for all reasonable and necessary medical services.

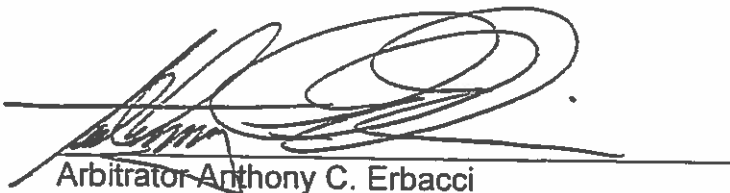
Respondent *has* paid all appropriate temporary total disability benefits

## ORDER

Respondent shall pay Petitioner permanent partial disability benefits of **\$575.35/week** for **62.5** weeks, because the injuries sustained caused the **12.5%** loss of the person as a whole, as provided in Section 8(d)2 of the Act.

**RULES REGARDING APPEALS** Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

**STATEMENT OF INTEREST RATE** If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

  
Arbitrator Anthony C. Erbacci

June 10, 2013  
Date

JUN 18 2013

14EWC00163

**FACTS:**

On October 21, 2011, the Petitioner sustained an undisputed accidental injury arising out of and in the course of his employment with the Respondent as a truck driver. The Petitioner testified that on that date, he was exiting the cab of his truck, using both of his hands to hold himself, when his foot slipped causing him to fall. The Petitioner testified that as he fell, he pulled both of his arms and shoulders, and dangled for a time with his legs hanging. He testified that he immediately had pain in both shoulders, more particularly on the right side, but he continued to work the rest of the day. He testified that his pain increased over night and he reported the incident to his supervisor the following day. The Petitioner then sought medical treatment at Illinois Valley Community Hospital on October 24, 2011, which was the Monday following the Friday accident.

An MRI of the Petitioner's right shoulder was performed on November 3, 2011 and was reported to demonstrate the presence of a partial thickness tear of the rotator cuff, anterior subacromial impingement on the rotator cuff, and a glenoid labrum SLAP tear. Conservative treatment was recommended and the Petitioner attended therapy for a few weeks and took medication as well.

The Petitioner then came under the care of Dr. Bryan Bear of Rockford Orthopedic Associates. Dr. Bear initially provided conservative treatment and he subsequently released the Petitioner to return to full duty work in December 2011. The Petitioner testified that he did return to work but that he continued to have right shoulder pain, especially with overhead movement of his arm. On April 26, 2012 the Petitioner returned to see Dr. Bear complaining of increased right shoulder pain. At that point, Dr. Bear felt that the Petitioner had failed conservative treatment and he recommended surgery. On May 30, 2012 the Petitioner underwent the prescribed surgery which consisted of a glenoid humeral joint debridement, arthroscopic debridement of a partial thickness subscapular superior edge tear, arthroscopic subacromial decompression bursectomy, and an arthroscopic assisted medial biceps tendon subpectoral tenodesis.

Following the surgery, the Petitioner underwent a course of physical therapy and followed up care with Dr. Baer. The Petitioner was given a light duty release on June 26, 2012 and was returned to his regular work on September 19, 2012. The Petitioner followed up with Dr. Bear on October 2, 2012 and Dr. Bear's examination of the right shoulder was reported to show good motion and strength. The doctor indicated that the Petitioner was doing well and essentially discharged him from care.

The Petitioner did return to see Dr. Bear for visits in January and February 2013 for a complaint of right hand numbness. However, it does not appear Dr. Bear believed this condition or the need for evaluation was related to the Petitioner's right shoulder injury and surgery. Dr. Bear suggested an EMG to evaluate the Petitioner for carpal tunnel or cubital tunnel syndrome, and an evaluation of the Petitioner's cervical spine was also suggested.

On November 21, 2012 the Petitioner was evaluated by Dr. Bear's associate, Dr.

14IVCC0163

Borchardt. The "History of Present Illness" noted in Dr. Borchardt's consultation notes indicates a left index finger injury in early April of 2009. There is no mention of the Petitioner's October 2011 right shoulder injury. Dr. Borchardt did note that the Petitioner underwent right shoulder surgery, although he indicated that it occurred on May 12, 2012. Dr. Borchardt reported that his examination of the Petitioner demonstrated grip strength of 73 pounds on the right as compared to 90 pounds on the left and biceps circumference on the right of 17 inches and the left of 18 inches. Dr. Bear noted that the Petitioner's right shoulder showed no swelling, discoloration or tenderness and good range of motion, but that there were trace amounts of pain in the biceps and impingement area. Dr. Borchardt analyzed the Petitioner's shoulder condition pursuant to the AMA Guidelines Sixth Edition and concluded that the Petitioner had sustained "7% Impairment of the Upper Extremity. Whole Person Impairment of 4%." Dr. Borchardt did not provide any causation opinion. to Dr. Borchardt's report. No other evidence of an impairment rating was offered by either party.

The Petitioner testified that although he has returned to regular work, he avoids any lifting above shoulder level with his right arm and he now uses his left arm more than he did prior to the injury. The Petitioner testified that he currently continues to experience pain in his right shoulder region at the end of the work day, as well as loss of grip strength and loss of range of motion.

The Petitioner further testified that he is currently unable to perform certain activities that he performed prior to the injury. He testified that he attempted to bowl once but there was too much pain involving with the lifting of the bowling ball and he dropped the ball in the gutter. He testified that he also attempted to play golf but could not swing a golf club because of limitation of motion and pain in his right shoulder and arm. The Petitioner further testified that his day to day living activities are limited due to loss of strength in the right shoulder and arm, as well as loss of range of motion.

The Petitioner also testified that he had not sustained any other accident or injury involving his right shoulder prior to October 21, 2011 nor had he sustained any other accident or injury involving his right shoulder subsequent to October 21, 2011.

## **CONCLUSIONS**

**In Support of the Arbitrator's Decision relating to (F.), Is Petitioner's current condition of ill-being causally related to the injury, the Arbitrator finds and concludes as follows:**

The Petitioner sustained an undisputed accidental injury to his right shoulder on October 21, 2011 when he slipped while exiting the cab of his truck, causing him to fall while holding on to the two hand rails with his upper extremities. This caused a pulling sensation in both upper extremities and the Petitioner noted the onset of pain thereafter. The following morning, he reported the incident. The Petitioner then sought medical attention for his

14IWCC0163

shoulder pain and was referred for an MRI that was performed less than two weeks after the date of the accident. The MRI had findings consistent with a rotator cuff tear, as well as a Slap II tear of the glenoid labrum, biceps tendinitis, and subacromial impingement syndrome. Subsequent treatment was rendered by Dr. Bear which included a surgical procedure to alleviate the conditions that he noted in the MRI and his physical findings.

The Arbitrator notes that the Petitioner was apparently able to perform all of the duties of his employment prior to his undisputed accidental injury and that he sought medical treatment for his shoulder almost immediately after the accident occurred and underwent a continuing course of medical treatment from that time through his release to return to work on September 19, 2012. There was no evidence presented which rebutted, contradicted, or conflicted with the testimony of the Petitioner, which the Arbitrator finds to be credible. While the Respondent disputed the issue of causal relation, the Respondent offered no evidence which would suggest the lack of a causal relationship between the Petitioner's injury of October 21, 2011 and his condition of ill-being.

The Arbitrator finds that the credible testimony of the Petitioner and the medical records in evidence support the conclusion that the petitioner's right shoulder condition and need for medical treatment and surgery is causally related to the October 21, 2011 work accident.

Based upon the foregoing and having considered the totality of the credible evidence adduced at hearing, the Arbitrator finds that the Petitioner's current condition of ill-being is causally related to the injury of October 21, 2011.

**In Support of the Arbitrator's Decision relating to (L.), What is the nature and extent of the injury, the Arbitrator finds and concludes as follows:**

On October 21, 2011, the Petitioner sustained an undisputed accidental injury to his right shoulder which required medical care including surgical intervention. An MRI of the Petitioner's shoulder revealed the presence of partial thickness tear of the rotator cuff, anterior subacromial impingement on the rotator cuff, and a glenoid labrum SLAP tear. Conservative treatment was unsuccessful and surgery consisting of glenoid humeral joint debridement, arthroscopic debridement of a partial thickness subscapular superior edge tear, arthroscopic subacromial decompression bursectomy, and an arthroscopic assisted medial biceps tendon subpectoral tenodesis was carried out on May 30, 2012. The Petitioner underwent a course of postoperative physical therapy and was ultimately released to return to his regular work.

As this claim involves an accident occurring after September 1, 2011, the Act requires the determination of permanent partial disability to be based upon consideration of five factors: (1) the reported level of impairment pursuant to AMA Guidelines; (2) the occupation of the injured employee; (3) the age of the employee at the time of the injury; (4) the employee's

14IVCC0163

future earning capacity; and (5) evidence of disability corroborated by the treating medical records.

Dr. Borchardt analyzed the Petitioner's shoulder condition pursuant to the AMA Guidelines Sixth Edition and concluded that the Petitioner had sustained "7% Impairment of the Upper Extremity. Whole Person Impairment of 4%." The Petitioner is employed as a truck driver and he has been released to return to his normal job without restrictions. The Petitioner testified that although he has returned to his normal work, he has pain with any lifting above shoulder level with his right arm and he now uses his left arm more than he did prior to the injury. The Petitioner testified that he currently continues to experience pain in his right shoulder region at the end of the work day, as well as loss of grip strength and loss of range of motion. The Petitioner was 45 years old at the time of trial and there was no evidence that the Petitioner's future earnings have been reduced as a result of this accident.

The Petitioner testified that he has pain in his right shoulder with any lifting above shoulder level with his right arm and he now has to use his left arm more than he did prior to the injury. The Petitioner testified that he currently continues to experience pain in his right shoulder region at the end of the work day, as well as loss of grip strength and loss of range of motion. The Petitioner further testified that he is currently unable to perform certain activities that he performed prior to the injury, such as bowling and golfing because of limitation of motion and pain in his right shoulder and arm. The Petitioner further testified that his day to day living activities are limited due to loss of strength in the right shoulder and arm, as well as loss of range of motion.

The Arbitrator finds the testimony of the Petitioner to be credible, persuasive, and corroborated by the treating medical records introduced into the record. The Arbitrator further finds the report of Dr. Borchardt to be of questionable reliability. In so finding, the Arbitrator notes that Dr. Borchardt's note contains no mention of the Petitioner's undisputed shoulder injury, an inaccurate accident date, and an inaccurate history of injury.

Based upon the foregoing, and having considered the totality of the credible evidence adduced at hearing, including the credible and corroborated testimony of the Petitioner and the treating medical records in evidence, the Arbitrator finds that, as a result of the Petitioner's accidental injury of October 21, 2011, the Petitioner sustained a 12.5% disability to his whole person, as provided in Section 8(d)2 of the Act.



STATE OF ILLINOIS )  
 ) SS.  
 COUNTY OF SANGAMON )

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Stanley Frank,

Petitioner,

14IWCC0164

vs.

NO: 11 WC 14143

Nestle, Inc.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, temporary total disability, permanent partial disability, medical expenses, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 5, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.


IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

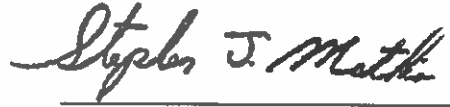
14IWCC0164


Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$53,800.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: MAR 07 2014

DLG/gal  
O: 2/27/14  
45

  
\_\_\_\_\_  
David L. Gore

  
\_\_\_\_\_  
Stephen Mathis

  
\_\_\_\_\_  
Mario Basurto

ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF ARBITRATOR DECISION

**FRANK, STANLEY**

Employee/Petitioner

Case# 11WC014143

14IWCC0164

**NESTLE INC**

Employer/Respondent

On 7/5/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

2934 JOHN V BOSHardy & ASSOCIATES PC  
1610 S SIXTH ST  
SPRINGFIELD, IL 62703

2461 NYHAN BAMBRICK KINZIE & LOWRY PC  
JASON H PAYNE  
20 N CLARK ST SUITE 1000  
CHICAGO, IL 60602

STATE OF ILLINOIS )  
)  
COUNTY OF SANGAMON )

☐ Injured Workers' Benefit Fund (§4(d))  
☐ Rate Adjustment Fund (§8(g))  
☐ Second Injury Fund (§8(e)(8))  
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION  
ARBITRATION DECISION

14 IVCC 0161  
Case # 11 WC 14143

STANLEY FRANK

Employee/Petitioner

v.

Consolidated case: 10 WC 32969

NESTLE, INC.

Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Brandon J. Zanotti**, Arbitrator of the Commission, in the city of **Springfield**, on **June 10, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's present condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ What temporary benefits are in dispute?  
☐ TPD ☐ Maintenance ☒ TTD
- L. ☒ What is the nature and extent of the injury?
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other \_\_\_\_\_

14IWCC0164

#### FINDINGS

On March 16, 2011, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned \$39,923.52; the average weekly wage was \$767.76 .

On the date of accident, Petitioner was 54 years of age, *single* with 0 dependent children.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *has not* paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit for \$0 for TTD, \$0 for TPD, \$0 for maintenance, and \$1,404.00 for other benefits, for a total credit of \$1,404.00.

Respondent is entitled to all applicable credit under Section 8(j) of the Act. (See Joint Exhibit 1, Stipulation of the Parties).

#### ORDER

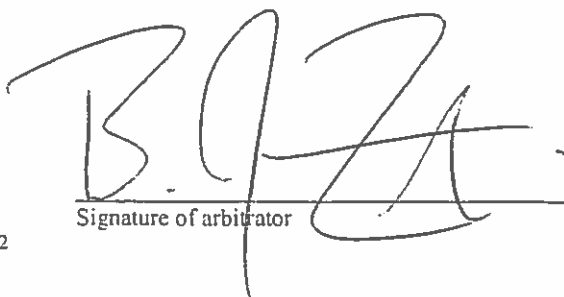
Respondent shall pay for all reasonable and related medical services, as set forth in Petitioner's Exhibit 6 (and as more fully discussed in the Memorandum of Decision of Arbitrator), and as provided in Section 8(a) of the Act. Respondent is entitled to credit for any actual related medical expenses paid by any group health provider pursuant to Section 8(j) of the Act, and Respondent is to hold Petitioner harmless for any claims for reimbursement from said group health insurance provider and shall provide payment information to Petitioner relative to any credit due. Respondent is to pay unpaid balances with regard to said medical expenses directly to Petitioner. Respondent shall pay any unpaid, related medical expenses according to the medical fee schedule, Section 8.2 of the Act, and shall provide documentation with regard to said fee schedule payment calculations to Petitioner.

Respondent shall pay Petitioner temporary total disability benefits of \$511.84/week for 6 3/7 weeks, commencing October 15, 2011 through November 28, 2011, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of \$460.66/week for 112.5 weeks, because the injuries sustained caused the 22.5% loss of the person as a whole as provided in Section 8(d)2 of the Act.

**RULES REGARDING APPEALS** Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

**STATEMENT OF INTEREST RATE** If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

  
\_\_\_\_\_  
Signature of arbitrator

07/01/2013  
Date

JUL 5 - 2013

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF SANGAMON )

14143 WC 32969

ILLINOIS WORKERS' COMPENSATION COMMISSION  
ARBITRATION DECISION

STANLEY FRANK  
Employee/Petitioner

Case # 11 WC 14143

v.

Consolidated Case: 10 WC 32969

NESTLE, INC.  
Employer/Respondent

MEMORANDUM OF DECISION OF ARBITRATOR

FINDINGS OF FACT

Petitioner, Stanley Frank, has been employed by Respondent, Nestle, Inc., since November 1979. In 1977, two years prior to being hired by Respondent, Petitioner underwent a lumbar spine laminectomy. Petitioner admitted to having episodes of back pain before March 16, 2011. Petitioner was prescribed Tramadol after it was recommended by Respondent's company physician in 1999, but had been receiving these medications from his family doctor. In 2008, Petitioner underwent a right hip replacement. Respondent submitted medical records indicating that in the thirty years before the work accident at issue, Petitioner sought treatment for occasional back pain and right hip pain. (Respondent's Exhibit (RX) 2). Petitioner was never referred to a spinal surgeon for lower back complaints arising out of any of these visits until after an accident of April 12, 2010, which is addressed in companion case number 10 WC 32969. (See RX 2). Petitioner did not report that accident initially as he suspected the symptoms were related to his right hip. That claim was denied in companion case number 10 WC 32969, which was tried in a consolidated hearing with the instant claim.

On April 12, 2010, Petitioner testified that he dismounted a forklift on the left side when he felt a sharp pain in his back. The forklift is depicted in Petitioner's Exhibit 11. There is a two foot drop between the floor of the fork truck, where Petitioner's feet sit flat while seated and driving the forklift, and the floor. There is a step approximately a foot off the ground between the floor of the forklift and the concrete plant floor.

Petitioner sought treatment from his primary care physician, Dr. Allen Gerberding, at a regularly scheduled appointment for his blood pressure medication on May 10, 2010, and mentioned he had right leg and thigh pain for the past few weeks. (PX 3). Petitioner testified he did not think he reported his claimed April 2010 work injury to Dr. Gerberding, and the doctor's records further confirm this. (See PX 3). X-rays of the lumbar spine were ordered and performed. (PX 3; PX 4). Dr. Gerberding ordered a MRI of Petitioner's lower back, which was scheduled for May 19, 2010. (PX 4). Dr. Gerberding referred Petitioner to Dr. Barry Werries, the orthopedic surgeon who replaced his right hip in 2008. (PX 3).

The MRI report of May 19, 2010 indicated that Petitioner had complaints of right leg pain and numbness of the right foot. The MRI showed multi-level degenerative disc disease with L4-5 and L5-S1 disc protrusion. (PX 4).

Dr. Werries examined Petitioner on June 9, 2010, reviewed the MRI, and determined Petitioner's symptoms were emanating from his lumbar spine rather than the right hip. Petitioner was referred to Dr. Timothy Van Fleet. (PX 5).

Dr. Van Fleet testified that Petitioner had been experiencing pain for several years and that he thought it might have started around the time of a right hip replacement a couple of years before. (PX 12, p. 8). Dr. Van Fleet noted that Petitioner reported a recent event in which he stepped off a high platform on April 12, 2010 with a twelve inch drop. (PX 12, pp. 8-9). While Dr. Van Fleet's report of June 11, 2010 does not reference an accident at work, Petitioner's intake form titled "Spine Sheet" drafted that day indicates that Petitioner "stepped off a high platform, about a 12" drop." (See PX 5). Further, the records from that day indicate that when asked about the current problem, specifically "when and where did injury occur?," the report states, "April 12 2010 back strain." (See PX 5). Dr. Van Fleet felt the MRI showed a small staple on the left side at the L4-5 level, consistent with his previous surgical procedure, and "high-grade" central stenosis at both L3-4 and L4-5. Dr. Van Fleet noted Petitioner continued to work. (PX 5). Petitioner testified that the back pain he experienced after stepping off of the fork truck was worse than the pain he had been experiencing before, and that it went down his leg. Petitioner informed Dr. Van Fleet of his prior surgeries and medical history. Dr. Van Fleet diagnosed Petitioner with spinal stenosis and recommended L3-4 and L4-5 hemilaminotomies. (PX 5).

Petitioner was referred to his doctor for cardiac clearance for surgery. (PX 5). Dr. Van Fleet explained that the surgical procedure was cancelled due to a cardiac clearance necessity. (PX 12, p. 11). Petitioner stated that he received treatment for his cardiac condition and did not have the surgery recommended by Dr. Van Fleet in 2011.

Petitioner testified that after this initial consultation he continued to work without restrictions. Further, the evidence indicates Petitioner did not seek further orthopedic care for his lumbar spine after his appointment with Dr. Van Fleet on June 11, 2010 until over a year later.

Petitioner testified that following the June 11, 2010 appointment with Dr. Van Fleet, he notified James McManus, his supervisor (who Petitioner believed was no longer employed with Respondent as of the time of trial), of his claimed accident. Petitioner testified that he also had a conversation with a production manager for Respondent, John Keech, on May 4, 2010. Petitioner testified that Mr. Keech asked him why he was limping, and that Petitioner responded that he had hurt his back or hip when dismounting a forklift. Mr. Keech testified that said conversation occurred in May 2010, but that it occurred on May 18, 2010, as Petitioner told Mr. Keech that he was having a MRI the following day (May 19, 2010). As stated, *supra*, Petitioner did undergo the MRI on May 19, 2010. (PX 4). The MRI would not have been ordered until at least May 10, 2010. Mr. Keech did not recall Petitioner relating any problem to an employment-related issue. An accident report was made on June 9, 2010, concerning the alleged April 12, 2010 accident. (See PX 11; RX 4).

On July 15, 2010, Petitioner returned to Dr. Gerberding, where it was noted that due to a cardiac issue Petitioner did not have the back surgery, and had been walking 4 to 5 miles a day and felt 90% improvement. (PX 4). Petitioner testified that he was happy that he did not have the surgery and did in fact feel improvement during this time period due to home exercises and daily walking. Petitioner was seen by Dr. Gerberding again on September 9, 2010, and these records are void of any reference to continued low back or leg pain. (PX 3).

The parties stipulated that on March 16, 2011, Petitioner sustained an accident that arose out of and in the course of his employment with Respondent when he again dismounted the same fork truck and felt the recurrence of the pain he experienced after the claimed accident of April 12, 2010. (Arbitrator's Exhibit (AX) 2; PX 7). The parties further stipulated that Petitioner notified Respondent of the work accident of March 16, 2011, within the time limits set forth in the Illinois Workers' Compensation Act, 820 ILCS 305/1 *et seq.* (hereafter the "Act"). (AX 2; PX 7).

Petitioner returned to Dr. Gerberding on May 5, 2011, noting that he had to increase his Tramadol to 4 to 5 per day due to back pain. (PX 3). Petitioner returned to Dr. Van Fleet on September 21, 2011. Petitioner filled out a health history questionnaire on that date, indicating the reason for his visit was a "back problem" and that his injury was work-related. On that date Petitioner complained of bilateral lower extremity pain. Dr. Van Fleet noted that the one symptom that had persisted from his 1977 accident was left leg numbness. Dr. Van Fleet

recommended bilateral laminotomies at L3-4, L4-5 and L5-S1. (Dr. Van Fleet's treatment plan was changed from that of June 11, 2010 to include an L5-S1 laminotomy along with laminotomies at L3-4 and L4-5). (PX 5).

Petitioner requested that Respondent authorize the procedure under its workers' compensation insurance and Respondent refused. (See PX 13). Petitioner proceeded with the surgery using his own health insurance as permitted under Section 8(j) of the Act. (PX 13).

Dr. Van Fleet performed bilateral L3-4, L4-5, and L5-S1 hemilaminotomies, a partial medial facetectomy, and foraminotomies on October 17, 2011. (PX 5; PX 12, p. 12). Dr. Van Fleet removed Petitioner from work after that procedure. (PX 12, p. 13). The doctor maintained Petitioner's work restrictions on October 28, 2011, and then released him to return to work without restrictions on November 29, 2011. (PX 5). Dr. Van Fleet released Petitioner from his care on January 11, 2012. (PX 5; PX 12, p. 13). On that date, Dr. Van Fleet advised Petitioner that he could return to the doctor if any problems persisted. Petitioner has not returned to Dr. Van Fleet since his last appointment in January 2012. (PX 12, pp. 13-14). Petitioner returned to his previous job as a forklift driver with Respondent after his work release from Dr. Van Fleet.

Dr. Van Fleet's deposition testimony was taken on July 18, 2012. (PX 12). Dr. Van Fleet explained that stenosis is diminished space available for the nerve roots and it can occur for a number of different reasons. Dr. Van Fleet further explained that spinal stenosis is acquired over a number years and can remain asymptomatic. (PX 12, p. 10). Dr. Van Fleet agreed there were no acute findings depicted on the MRIs and x-rays, and that there was no pathologic change after the accidents in April 2010 and March 2011. (PX 12, p. 19). Dr. Van Fleet stated that if after recommending surgery in June 2010, Petitioner told Dr. Gerberding on July 15, 2010 that he was 90% improved, it would be fair to say that any aggravation would have resolved by July 15, 2010. (PX 12, pp. 19-20).

Dr. Van Fleet stated that if Petitioner was operating a forklift where he was seated about three feet off of the ground and his feet were a couple of feet off the ground, and in the process of getting off, he jumped or stepped down about a foot and landed awkwardly on his left leg, that this could have resulted in an aggravation of the spinal stenosis and resulted in the radiculopathy that was identified. (PX 12, p. 14). Dr. Van Fleet was of the opinion that after Petitioner performed the same maneuver on March 16, 2011, he had a recurrence of the same lower back and leg pain, and this event could have also aggravated the stenosis condition. (PX 12, pp. 14-15). Dr. Van Fleet opined that the accident of March 16, 2011 could have aggravated the pre-existing stenosis at L3 through L5 and resulted in a recurrence of radiculopathy and contributed to the need for Petitioner's surgery. (PX 12, p. 22). Dr. Van Fleet agreed that there was an element of pre-existing and degenerative problems that contributed to Petitioner's need for surgery. (PX 12, p. 15). However, Dr. Van Fleet did feel that the work accidents contributed to the need for his surgery. (PX 12, pp. 16, 22).

Dr. Edward Goldberg provided medical records reviews at Respondent's request on March 16, 2011 and March 28, 2012. Dr. Goldberg testified on behalf of Respondent on March 18, 2013. Dr. Goldberg testified that Petitioner had a prior history of a discectomy at L4-5 in 1997, though he did not review that operative report. (RX 1, p. 10). Dr. Goldberg noted Petitioner had physical therapy at Passavant for low back pain on November 9, 1992. (RX 1, pp. 10-11). Dr. Goldberg reviewed a CT scan from September 2, 2004, noting moderate to severe spinal stenosis at L3-4 and a postoperative left L4 laminectomy. (RX 1, p. 13). Dr. Goldberg admitted that the CT scan performed around September 2, 2004 was ordered by Dr. Gerberding. (RX 1, p. 44). Dr. Goldberg testified that on July 17, 2003, Dr. Gerberding noted a fall out of a chair the same month, which would be fourteen months prior to the CT scan. (RX 1, p. 44). Dr. Goldberg admitted that Dr. Gerberding's notes of May 3, 2007 contained no lumbar complaints. (RX 1, pp. 44-45).

Dr. Goldberg explained that an L4 laminectomy would be performed to cure nerve compression, whether due to stenosis or disc herniation. (RX 1, pp. 13-14). Dr. Goldberg also noted that Petitioner had hip arthritis based upon the CT scan performed on September 2, 2004, and that Petitioner underwent a right total hip replacement on March 19, 2008. (RX 1, pp. 14-15, 38).

Dr. Goldberg noted that prior to the hip replacement, on February 4, 2008, Dr. Werries noted complaints of pain traveling down the right lower extremity with numbness. (RX 1, p. 15). Again, Dr. Goldberg agreed that Petitioner had a total hip replacement on March 19, 2008. (RX 1, p. 38). On cross-examination, Dr. Goldberg admitted that as of May 1, 2008, Dr. Werries noted Petitioner was having no leg or groin pain, and that nothing relating to back pain was reported. (RX 1, p. 38). Dr. Goldberg admitted that Dr. Werries had noted back pain when present. (RX 1, p. 39). Dr. Goldberg also admitted to reviewing records that showed that Dr. Gerberding's records from August 1, 2008 recorded that Petitioner reported no problems. (RX 1, p. 39).

Dr. Goldberg noted that Petitioner complained of right leg pain in the back of the thigh on May 10, 2010. (RX 1, p. 16). Dr. Goldberg agreed that when Petitioner returned to Dr. Gerberding on May 10, 2010, complaining of right leg pain, that there was some concern that the pain may have been emanating from the right total hip replacement, but that Dr. Werries had determined that the pain was not emanating from the hip but from the lower back or lumbar spine. (RX 1, pp. 39-40). Dr. Goldberg agreed that a person with pathology in the lumbar spine may have symptomology that is referred out of the back into the hip, buttocks, and leg, and that Petitioner had that symptomology. (RX 1, pp. 40-41).

Dr. Goldberg reviewed lumbar spine x-rays dated May 10, 2010, after the accident in case number 10 WC 32969, which noted post-operative change with the L4 laminectomy defect, disc space narrowing at L3-4, L4-5, and L5-S1, and no acute pathological change. (RX 1, p. 16). Dr. Goldberg also reviewed a lumbar spine MRI dated May 19, 2010, that showed significant spinal stenosis at L3-4 and L4-5, without a herniation. (RX 1, p. 17). Dr. Goldberg also noted Petitioner was born with a small canal called congenital spinal stenosis, L2-3 through L4-5, and postoperative change on the left at L4-5. (RX 1, p. 17).

Dr. Goldberg reviewed Dr. Werries' June 9, 2010 office note which recorded increasing hip pain and back pain. (RX 1, pp. 17-18). Dr. Goldberg stated that hip complaints and low back complaints overlap, and it is not uncommon for complaints of hip pain to be emanating from the lumbar spine, and vice-versa. (RX 1, p. 18).

Dr. Goldberg reviewed a note dated July 15, 2010 from Dr. Gerberding which stated Petitioner had been walking 4 to 5 miles a day and reported 90% improvement, and was pleased that he did not have surgery. (RX 1, p. 21). Dr. Goldberg admitted that the records showed Petitioner's symptoms appeared to be significantly improved as of July 15, 2010. (RX 1, p. 42).

Dr. Goldberg agreed that spinal stenosis is a condition where symptoms may wax and wane, and he saw documentation of issues with spinal stenosis for Petitioner. (RX 1, pp. 35-36).

Dr. Goldberg agreed that spinal stenosis, whether acquired or congenital, can remain asymptomatic for long periods of time or one's lifetime. (RX 1, p. 41). Dr. Goldberg did not feel that the surgeries performed by Dr. Van Fleet were related to Petitioner's claimed work injury of March 16, 2011. (RX 1, p. 34). Dr. Goldberg based his opinion on not seeing any accident report regarding March 16, 2011. (RX 1, p. 34). Dr. Goldberg did feel that the surgery performed by Dr. Van Fleet was necessary for the underlying spinal stenosis. (RX 1, p. 35).

Dr. Goldberg agreed that after March 16, 2011, Petitioner's symptoms were not limited to just the right leg, as after the April 12, 2010 accident, but involved both legs. (RX 1, p. 43). Dr. Goldberg agreed that the MRI showed impingement bilaterally, and that Dr. Van Fleet operated on Petitioner to address the canal stenosis. (RX 1, pp. 43-44). Dr. Goldberg admitted that Dr. Van Fleet did not operate on a herniated disc. (RX 1, p. 44).

Petitioner testified that his back currently hurts when he traverses over a dock plate at work. Further, if he sits or lies down too long (approximately 5-10 minutes), his back will hurt. He still takes Tramadol for the pain. He testified that his right leg pain is essentially resolved, and that the pain he currently experiences is basically focused in the low back. Petitioner is still working for Respondent.

Petitioner testified that from his back surgery in 1977 until following his alleged April 2010 work accident, he did not see any surgeon for his low back or receive any treatment to his low back, with the exception of x-rays, CT scans and medication prescriptions.

Petitioner submitted medical bills that he claims he incurred as a result of the work accident as Petitioner's Exhibit 6. The parties offered Joint Exhibit 1, which is a stipulation concerning Respondent's credit under Section 8(j) of the Act and further agreement to hold Petitioner harmless from any claim of reimbursement from Respondent's group medical plan for bills under which credit for payment was taken.

### CONCLUSIONS OF LAW

#### **Issue (F): Is Petitioner's current condition of ill-being causally related to the injury?**

It is well settled law that an employer takes its employees as it finds them, and a pre-existing condition does not bar compensation for an injury if the employment was also a causative factor of the condition of ill-being. *Komatsu Dresser Co. v. Industrial Comm'n*, 235 Ill. App. 3d 779, 787, 601 N.E.2d 1339 (2d Dist. 1992). Further, a work-related injury need not be the sole or principal causative factor, as long as it was a causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill.2d 193, 205, 797 N.E.2d 665 (2003).

The Arbitrator notes that both medical experts agreed that Petitioner had severe, or advanced, lumbar stenosis which predated the work accident. The Arbitrator also notes that this condition did not cause Petitioner to miss work on any sustained basis after his prior back surgery in 1977. The Arbitrator notes that the accident of April 12, 2010 caused at most a temporary aggravation of this pre-existing condition and Petitioner was not held off of work for more than one week after April 12, 2010, from May 10, 2010 through May 17, 2010. (PX 3). The medical records note a lack of ongoing lower back and leg complaints after the symptoms resolved as of July 2010. (PX 3).

Both medical experts agreed that spinal stenosis can remain asymptomatic. The Arbitrator notes however, that Respondent presented no medical evidence or testimony that Petitioner's spinal stenosis had deteriorated to such a point that any activity of daily living would have resulted in the need for the bilateral hemilaminotomies that Dr. Van Fleet ultimately performed.

Petitioner sustained an aggravation to his low back, and promptly reported this accident on March 16, 2011. Respondent stipulated that Petitioner sustained the accident of March 16, 2011. The medical records establish that it was only after the accident of March 16, 2011 that Petitioner's symptoms returned and progressed to include bilateral leg pain. The medical records further establish that bilateral leg pain did not exist as a complaint before either the April 12, 2010, or March 16, 2011 accidents.

The Arbitrator notes Dr. Van Fleet's credible testimony that Petitioner's lumbar spinal stenosis was aggravated by the work accident of March 16, 2011, and his lumbar spine surgery was brought about by a combination of his pre-existing, acquired spinal stenosis, and the accident of March 16, 2011. The Arbitrator finds this opinion is credible, supported by the medical records, and further finds Petitioner's lumbar spinal stenosis and need for the three level bilateral hemilaminotomy surgeries to be causally related to the accident of March 16, 2011.

#### **Issue (J): Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?**

Petitioner submitted medical bills as Petitioner's Exhibit 6. The Arbitrator awards the causally related, reasonable medical expenses incurred from the date of accident as follows:

Dr. Allen Gerberding, 5/5/11-10/10/11	\$ 334.00
Passavant Area Hospital, 9/26/11	\$ 3,491.69
Passavant Area Hospital, 10/11/11	\$ 623.81
Clinical Radiologists, 9/26/11	\$ 545.50
Orthopedic Center of Illinois, 6/11/10-10/17/11	\$18,602.00

Clinical Pathologists of Central IL, 10/11/11

14TUC09164  
\$ 44.50

St. John's Hospital, 10/17/11

\$12,778.92

Sangamon Associated Anesthesiologists, 10/17/11 \$ 1,760.00

**Total:**

**\$38,180.42**

The parties submitted a joint stipulation entered into evidence as Joint Exhibit 1. The parties stipulate that if there is an award for medical bills in this case, that Respondent shall be entitled to a credit pursuant to Section 8(j) of the Act for the medical bills paid by Respondent's group medical plan. Respondent's liability for the medical bills is limited to the amounts set forth in the medical fee schedule, Section 8.2 of the Act. After repricing the bills under the medical fee schedule, and after taking said credit under Section 8(j) of the Act, Respondent shall pay the remainder of the medical bills awarded, if any, to Petitioner. Petitioner agrees to cooperate with Respondent in obtaining properly coded medical bills and in obtaining any other information necessary to properly adjudicate the bills. By taking a Section 8(j) credit, Respondent agrees to hold Petitioner safe and harmless from any claim for reimbursement from Respondent's group medical plan for the payment of reasonable, necessary, and related medical expenses for which Section 8(j) credit was taken.

**Issue (K): What temporary benefits are in dispute? (TTD)**

Petitioner was temporarily and totally disabled from October 15, 2011 through November 28, 2011, a period of 6 3/7 weeks, as a result of the low back surgery. Petitioner received non-occupational disability benefits of \$1,404.00 during this time period for which Respondent is entitled to credit.

**Issue (L): What is the nature and extent of the injury?**

As a result of the work accident, Petitioner underwent surgery consisting of bilateral L3-4, L4-5, and L5-S1 hemilaminotomies, a partial medial facetectomy and foraminotomies on October 17, 2011. Petitioner returned to work for Respondent without restrictions, and has not returned to see his physician, Dr. Van Fleet, since the doctor's release of Petitioner in January 2012. Petitioner notes that his back will hurt after he drives his fork truck over a dock plate. He continues to take Tramadol for his pain. If he sits or lies down for too long, he will experience low back pain. Petitioner's right leg pain is essentially resolved, and the pain he currently experiences is basically focused in the low back. As a result of the foregoing, the Arbitrator finds that the injury sustained resulted in the 22.5% loss of use to the person as a whole pursuant to Section 8(d)2 of the Act.



STATE OF ILLINOIS )  
 ) SS.  
 COUNTY OF )  
 WILLIAMSON )

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Stephen Mark Brock,

Petitioner,

vs.

NO: 11 WC 32721

Southern Illinois University,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 5, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: MAR 07 2014

DLG/gal  
 O: 2/27/14  
 45

  
 David L. Gore

  
 Stephen Mathis

  
 Mario Basurto

14TWCC0165

ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF ARBITRATOR DECISION

**BROCK, STEPHEN MARK**

Employee/Petitioner

Case# **11WC032721**

**SOUTHERN ILLINOIS UNIVERSITY**

Employer/Respondent

14IWCC0165

On 8/5/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.06% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0355 WINTERS BREWSTER CROSBY ET AL  
LINDA J BRAME  
111 W MAIN ST  
MARION, IL 62959

0499 DEPT OF CENTRAL MGMT SERVICES  
MGR WORKMENS COMP RISK MGMT  
801 S SEVENTH ST 6 MAIN  
PO BOX 19208  
SPRINGFIELD, IL 62794-9208

0558 ASSISTANT ATTORNEY GENERAL  
KYLEE JORDAN  
601 S UNIVERSITY AVE SUITE 102  
CARBONDALE, IL 62901

0498 STATE OF ILLINOIS  
ATTORNEY GENERAL  
100 W RANDOLPH ST  
13TH FLOOR  
CHICAGO, IL 60601-3227

0904 STATE UNIVERSITY RETIREMENT SYS  
PO BOX 2710 STATION A\*  
CHAMPAIGN, IL 61825

CERTIFIED as a true and correct copy  
pursuant to 826 ILCS 305/14

AUG 5 2013



*[Signature]*  
KIMBERLY B. JANAS Secretary  
Illinois Workers' Compensation Commission

STATE OF ILLINOIS )  
)SS.  
COUNTY OF Williamson )

- |                                     |                                       |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/>            | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/>            | Rate Adjustment Fund (§8(g))          |
| <input type="checkbox"/>            | Second Injury Fund (§8(e)18)          |
| <input checked="" type="checkbox"/> | None of the above                     |

ILLINOIS WORKERS' COMPENSATION COMMISSION

ARBITRATION DECISION

1411000165

**Stephen Mark Brock**

Employee/Petitioner

v.

**Southern Illinois University**

Employer/Respondent

Case # 11 WC 032721

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Joshua Luskin**, Arbitrator of the Commission, in the city of **Mt. Vernon**, on **June 6, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☒ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ What temporary benefits are in dispute?  
☐ TPD ☐ Maintenance ☒ TTD
- L. ☒ What is the nature and extent of the injury?
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other \_\_\_\_\_

## FINDINGS

On **August 16, 2011**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did not* sustain an accident that arose out of and in the course of employment.

Timely notice of the allegation of accident *was* given to Respondent.

Petitioner's current condition of ill-being *is not* causally related to the accident.

In the year preceding the injury, Petitioner earned **\$41,412.00**; the average weekly wage was **\$796.38**.

On the date of accident, Petitioner was **58** years of age, *single* with **0** dependent children.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *is not liable for* appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **\$2,13.68** for TTD, \$            for TPD, \$            for maintenance, and \$            for other benefits, for a total credit of **\$2,123.68**.

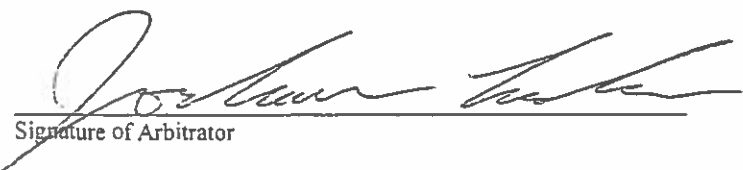
Respondent is entitled to a credit of \$ **if any**            under Section 8(j) of the Act.

## ORDER

*For reasons set forth in the attached decision, benefits are denied.*

**RULES REGARDING APPEALS** Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

**STATEMENT OF INTEREST RATE** If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

  
Signature of Arbitrator

  
Date

AUG 5 - 2013

**BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION**

STEPHEN MARK BROCK,

Petitioner,

vs.

SOUTHERN ILLINOIS UNIVERSITY,

Respondent.

14TWCC0165

No. 11 WC 32721

**ADDENDUM TO ARBITRATION DECISION**

Procedurally, this matter was consolidated with 12 WC 02487 on April 17, 2013. Arb.Ex.III-IV. On June 6, 2013, case number 12 WC 02487 was voluntarily dismissed by the claimant. Arb.Ex.V. This matter thereafter proceeded to hearing that day.

**STATEMENT OF FACTS**

The claimant is a right hand dominant man who works as an IT Technical Associate at Southern Illinois University. He has worked there as a computer programmer and informational technical specialist since November 2008. He testified that he worked approximately fifty hours per week for approximately ten months after he was first hired, and then a standard 37.5 hour week thereafter. The petitioner described his job as involving a substantial amount of computer usage, the precise percentage of which was somewhat disputed. He asserts bilateral carpal tunnel syndrome incurred through repetitive trauma with an effective accident date of August 16, 2011. The petitioner testified that he began noticing tingling sensations in January 2011 which had become significant in July 2011.

The petitioner's treating medical records were introduced as PX1. The first record present is from August 16, 2011, when he underwent EMG testing at the recommendation of his primary care physician. That study demonstrated moderate bilateral carpal tunnel syndrome with no evidence of ulnar neuropathy. PX1, pp.29-32.

The petitioner then presented to Dr. Kosit Prieb, a hand surgeon with Vascular & Hand Surgery, on August 25, 2011. He reported a history of symptoms of approximately seven months. Ultrasound imaging of the wrists was performed that day demonstrating dilation of the nerves consistent with carpal tunnel syndrome. PX1 p.24. Dr. Prieb assessed bilateral carpal tunnel syndrome and injected each wrist. He also provided night splints. PX1, pp.14, 21.

On September 22, 2011, he returned to Dr. Prieb and reported one day's relief from the injection. He also reported numbness in the little and ring fingers. Dr. Prieb recommended EMG studies to evaluate ulnar nerve involvement. PX1, pp.13, 20.

Repeat nerve conduction studies were performed on September 29, 2011. While the results do not appear to have been compared to the August EMG, the findings were reported as demonstrating bilateral carpal tunnel syndrome with no evidence for ulnar neuropathy (cubital tunnel syndrome). PX1, pp.25-28.

The petitioner followed up with Dr. Prieb on October 6, 2011. Dr. Prieb reviewed the repeat EMG, provided elbow splints and recommended bilateral carpal tunnel release surgery. PX1, pp.12, 19. He renewed those recommendations on November 3, 2011. PX1 pp.11, 18.

On November 29, 2011, Dr. Prieb performed surgical decompression of the petitioner's right carpal tunnel. No complications are noted in the surgical report. PX1 p.23. The petitioner was prescribed off work until December 15 pending a postoperative follow-up. PX1 p.37.

On December 12, 2011, the petitioner reported he had no numbness or pain in the right hand since the surgery. Dr. Prieb released the petitioner to full duty work at that time and noted the petitioner would schedule the left hand surgery. PX1, pp. 10, 17, 35.

The left wrist surgery took place on January 10, 2012, without complications. PX1 p.22. On January 23, 2012, the petitioner reported no further numbness in his hands. Dr. Prieb noted good results, released him to work and instructed him to follow up in three months for an evaluation. PX1 pp 9, 16, 33.

On April 23, 2012, the petitioner saw Dr. Prieb. He noted some persistent pain in his hands but Dr. Prieb assessed him as healing well with good range of motion in the fingers. The petitioner was discharged with instructions to return as needed. PX1 p.15.

The respondent commissioned a Section 12 evaluation with Dr. Anthony Sudekum on November 5, 2012. See generally RX7. Following evaluation of the petitioner and review of the petitioner's job duties, Dr. Sudekum noted the petitioner's multiple non-work-related risk factors for carpal tunnel syndrome included age, obesity, hypertension, smoking, and hypercholesterolemia. Dr. Sudekum concluded that the petitioner's work activities did not serve as the primary cause of the condition, but that if the petitioner had in fact been engaging in effectively constant computer keyboard data entry at the rate of 95% of his day, the job duties may have aggravated the condition.

The respondent introduced job descriptions (RX4, RX5) suggesting the petitioner's job involved fine manipulation between 34-66% of the day and that his duties included software analysis and modification approximately 60% of the time. The petitioner admitted his keyboard usage was less than 95% of the time.

**OPINION AND ORDER**

**Accident and Causal Relationship**

14IWCC0165

The petitioner is relying on a repetitive trauma theory. In such cases, the claimant generally relies on medical testimony to establish a causal connection between the claimant's work and the claimed disability. See, e.g., *Peoria County Bellwood*, 115 Ill.2d 524 (1987); *Quaker Oats Co. v. Industrial Commission*, 414 Ill. 326 (1953). When the question is one specifically within the purview of experts, expert medical testimony is mandatory to show the claimant's work activities caused the condition of which the employee complains. See, e.g., *Nunn v. Industrial Commission*, 157 Ill.App.3d 470, 478 (4<sup>th</sup> Dist. 1987). The causation of carpal tunnel syndrome via repetitive trauma has been deemed to fall in the area of requiring such expert testimony. *Johnson v. Industrial Commission*, 89 Ill.2d 438 (1982). This has not been done.

First, the treating physician provided no opinion of any sort relative to accident or causal relationship. Nothing in the medical records indicates that Dr. Prieb was ever informed of the claimant's occupational duties and he provides no indication of what, if anything, gave rise to the condition. The only information he noted was of the petitioner's comorbidities, including the smoking history and blood pressure information.

The Section 12 examiner noted that the work activities "may have" served as an aggravating factor, if the petitioner was in fact engaging in keyboarding activities 95% of the time. The Commission has noted "'[c]ould be a possible aggravating factor' is not a definitive medical opinion establishing causation." *Jeffrey Miller v. Menard Correctional Center*, 12 IWCC 1182. Moreover, the petitioner acknowledged that 95% is an excessive percentage. This is further corroborated by the job analysis suggesting a far lower percentage with a less repetitive schedule.

The respondent did pay benefits and had, at one point, offered a settlement to the claimant. However, the furnishing of medical and/or disability benefits is specifically noted under Section 8 of the Act to not be evidence of liability, and offers of settlement are not evidence of liability or case valuation under Illinois Rule of Evidence 408. The only medical opinion submitted was decidedly tentative and based on an exaggerated and inaccurate description of the petitioner's employment duties. This is not sufficient to prove a causal link between the petitioner's employment and his claimed injuries, as the right to recover benefits cannot rest upon speculation or conjecture. *County of Cook v. Industrial Commission*, 68 Ill.2d 24 (1977).

**Notice, Medical Services, Temporary Total Disability and Nature and Extent**

These issues are moot given the above findings.



STATE OF ILLINOIS )  
 ) SS.  
 COUNTY OF SANGAMON )

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Melissa A. Wagner,

Petitioner,

vs.

NO: 13 WC 01726

Community Care Systems, Inc.,

14IWCC0166

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, temporary total disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 9, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

No bond is required for removal of this cause to the Circuit Court by Respondent. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: MAR 07 2014

DLG/gal  
 O: 2/27/14  
 45

  
 David L. Gore

  
 Stephen Mathis

  
 Mario Basurto

ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF 19(b) DECISION OF ARBITRATOR

14IWCC0166

WAGNER, MELISSA A

Employee/Petitioner

Case# 13WC001726

COMMUNITY CARE SYSTEMS INC

Employer/Respondent

On 9/9/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.05% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0834 KANOSKI BRESNEY  
CHARLES EDMISTON  
129 S CONGRESS  
RUSHVILLE, IL 62681

0332 LIVINGSTONE MUELLER ET AL  
KEN BIMA  
620 E EDWARDS PO BOX 335  
SPRINGFIELD, IL 62705

STATE OF ILLINOIS )  
)SS.  
COUNTY OF Sangamon )

- |                                     |                                       |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/>            | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/>            | Rate Adjustment Fund (§8(g))          |
| <input type="checkbox"/>            | Second Injury Fund (§8(e)18)          |
| <input checked="" type="checkbox"/> | None of the above                     |

ILLINOIS WORKERS' COMPENSATION COMMISSION  
ARBITRATION DECISION  
19(b)

14IWCC0166

Melissa A. Wagner  
Employee/Petitioner

Case # 13 WC 01726

v.

Consolidated cases: N/A

Community Care Systems, Inc.  
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Nancy Lindsay**, Arbitrator of the Commission, in the city of **Springfield**, on **July 11, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☐ Is Petitioner entitled to any prospective medical care?
- L. ☒ What temporary benefits are in dispute?  
☐ TPD ☐ Maintenance ☒ TTD
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other \_\_\_\_\_

FINDINGS

14IVCC0166

On the date of accident, **11/27/2012**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did not* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is not* causally connected to the accident.

In the year preceding the injury, Petitioner earned **\$16,060.20**; the average weekly wage was **\$308.55**.

On the date of accident, Petitioner was **32** years of age, *single* with **1** dependent child.

ORDER

Petitioner failed to prove she sustained an accident on November 27, 2012 that arose out of and in the course of her employment with Respondent or that her current condition of ill-being is causally connected to her alleged accident. Petitioner's claim for compensation is denied.

**RULES REGARDING APPEALS** Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

**STATEMENT OF INTEREST RATE** If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

  
\_\_\_\_\_  
Signature of Arbitrator

**September 4, 2013**  
\_\_\_\_\_  
Date

SEP 9 - 2013

**The Arbitrator finds:**

Petitioner has worked for Respondent for the past seven years. She works as a home health aide which requires Petitioner to travel to each participant's home and assist the participants with activities of daily living. While working at the participant's residence, Petitioner would earn \$10.65 per hour. While traveling between participants, Petitioner would be reimbursed \$0.40 a mile and be paid an hourly rate of \$8.25. Petitioner testified that she would not be reimbursed for mileage or paid for time when she is traveling outside her route from one participant to another.

On November 27, 2012, Petitioner left her first participant in Nebo and then drove to 613 Jill Street in Pittsfield for a visit with her second participant. Petitioner testified that she was at this participant's residence from 10:30 a.m. – 12:30 p.m. Petitioner testified that at the time that she left this participant's home she was not thirsty. Petitioner was next scheduled to see a participant located outside of Nebo at 1:00 p.m. Petitioner left her second participant's home in Pittsfield and proceeded to travel on County Highway South to Vin Fiz Highway. Petitioner testified that she became thirsty and decided to stop for a soda in between visits. Petitioner testified that it was in between pay periods and she only had \$0.90.

Once Petitioner arrived at the intersection of Vin Fiz Highway, instead of turning left or east towards the next participant, Petitioner elected to turn west or right onto Vin Fiz Highway until she got to Pine Street. Petitioner took a left on Pine Street and as she was proceeding south on Pine Street, she was struck by another vehicle that was backing out of his residence (RX1). Petitioner testified that at the time of the accident she was heading towards the Nebo Community Center which is located on Carol Street and Smith's Alley to the soda machine. Petitioner testified that her residence is located about three blocks from the Nebo Community Center. Petitioner testified that despite the fact that she was down to her last \$0.90 she was not planning to go to her residence to get a glass of water as she was not supposed to do personal errands during work hours. Petitioner testified that her supervisor gave her extra time in between participants to allow her to get something to eat or drink. Petitioner testified that they were allowed to bring something to eat while at a participant's residence and were allowed to drink the participant's water. Petitioner testified that it took approximately 15 minutes to get from the second participant's residence in Pittsfield to her third participant's home outside of Nebo. Petitioner testified that she did not want to get a drink of water at the participant's home outside of Nebo as she was unsure if that participant had well or city water. Petitioner testified that there were other locations in route that she could have stopped to buy a soda.

Petitioner testified that the motor vehicle accident took place at approximately 12:50 p.m. Petitioner testified that a police officer arrived at the scene and interviewed her. Petitioner was asked what time the accident took place. The police report notes that the accident took place at 1:05 p.m. and the police arrived at 1:15 p.m. Petitioner disputes this. Petitioner testified that when the vehicle backed into her, her head swung and struck the side window of the car which jarred her. Approximately 10 minutes after it happened, she experienced pain in her neck. Petitioner was transported by ambulance to the Illini Community Hospital in Pittsfield.

Regarding the accident, police officer Doug Zulauf completed an Illinois Traffic Crash Report. His report states:

"On 11/27/12 at approximately 1:15 p.m., I (Tpr. Doug Zulauf) was called to a minor accident on Pine St. in Nebo, Illinois. When I arrived I spoke with the drivers involved who stated the accident occurred at approximately 1:05 p.m. The driver

of unit #1, Carl D. Neese (1/11/56), was attempting to back out of his driveway onto Pine Street, just north of Smith Alley Street. Neese stated he looked both ways and started backing out. Neese advised he did not see unit #2 until just before impact. Neese struck unit #2, which was s/b on Pine Street. From Pike County Highway 10 (Vin Fiz Highway). The driver of unit #2, Melissa A. Wagner (5/05/80) struck the rear of unit #1 as it was backing into Pine Street. Wagner complained of stiffness/soreness at the time of my arrival and requested an ambulance. Pike County Ambulance arrived and Wagner was taken to Illini Community Hospital to be treated for minor injuries. Both drivers stated they were wearing their seatbelts at the time of the accident and no air bags deployed in either vehicle. Both drivers stated they did not need a tow for their vehicles and both units were driven from the scene. A friend of Wagner's, Bruce W. Richards (10/04/55), removed unit #2 from the scene." (RX1)

Petitioner testified that she called Tammy Booth after the accident and indicated that she did not know if she was going to be able to make it to her next participant due to the motor vehicle accident. The following day Petitioner met with the area administrator, Connie Claybourn, and brought her a copy of the police report and completed an accident report the following day. In the incident report, Petitioner noted that the location where the incident occurred was on Pine Street/Smith Bridge Street "outside in motor vehicle in route to participant's home" (PX6). Petitioner also completed a "travel trip log" for the date in question Petitioner listed her miles between participants and stated "In route to participant's home when crash occurred" (RX2).

Records from Illini Community Hospital document that Petitioner was seen in the emergency department on November 27, 2012, following a motor vehicle accident. (PX 4, p. 3) She reported pain at the base of her neck. Petitioner reported improvement of pain after being given Torodol. A CT scan of her cervical spine showed no acute findings. According to the medical records, Petitioner denied hitting her head. (PX 4)

Medical records show that the Petitioner was seen on the following day at Quincy Medical Group where she saw Dr. Raif, her primary care physician. (PX 2, pp. 92-94) Dr. Raif recorded a consistent history of accident and noted that Petitioner reported severe pain, stiffness and an inability to move her neck. Petitioner reported an inability to sleep the previous night and was suffering a headache. On examination, it was noted that Petitioner's gait was abnormal and that her neck was tender. She was diagnosed with a neck strain following a motor vehicle accident at work. Petitioner was advised to use ice and heat, was provided with a soft cervical collar, was prescribed Torodol for pain and advised to remain off work until follow up on December 3. Petitioner did return to Dr. Raif on December 3, 2013, reporting that she was still having significant pain down the right side of her neck and across her right shoulder with intermittent numbness in her right arm, as well as swelling in her right hand. (PX 2, pp. 88-90) Petitioner reported stabbing pains in her spine. On examination, Dr. Raif noted that the Petitioner's posture, gait, ability to climb onto the examination table and ability to change position smoothly were all abnormal. Petitioner's neck was tender and her cervical range of motion was abnormal. Petitioner was diagnosed with a neck pain and cervical strain. Petitioner was advised to continue her medications and soft collar and an MRI of the cervical spine was ordered. Petitioner was continued off work until her next appointment on December 7. (PX 2, p. 118) An MRI of the cervical spine taken that same day showed minimal soft tissue edema and mild degenerative disc disease. (PX 2, p. 120) In a handwritten note, Dr. Raif's nurse practitioner advises that she should begin physical therapy. Petitioner returned to Dr. Raif's office on December 7, 2013, reporting continued pain in the back and right side of her neck that travels across and under her right scapula. (PX 2, pp. 76-78) Petitioner reported an episode the previous night when pain had radiated into her head and had awoken her. Petitioner reported that her employer had advised her that she could not return to work until she had a full release. On examination, Petitioner was noted to have an abnormal gain with neck tenderness. Her cervical spine was noted to be tender to palpation with muscle tightness and

tenderness noted. Petitioner had limited motion of her neck due to pain. Petitioner also had tenderness in her right shoulder and pain along her right clavicle, with limited motion of her right shoulder. Petitioner was advised to continue her current medication and set up physical therapy. Petitioner was advised to remain off work until re-evaluated on December 21. (PX 2, p. 116)

On 12/11/2012, Petitioner provided a recorded statement to the adjuster. In the recorded statement, Petitioner indicated that the accident took place when she was on the county highway and turning onto Vin Fiz Highway. Petitioner did not report that the accident took place on Pine Street or that she was on her way to get a soda at the time of the accident (RX4). Petitioner testified that when she provided the recorded statement, she was on medication and did not realize that she was providing a recorded statement.

Records from Illini Community Hospital show that the Petitioner did undergo an initial evaluation for therapy on December 17, 2012. (PX 4, pp. 64-65) Petitioner provided a consistent history of onset with her motor vehicle accident on November 27, 2012, and reported pain in her head, neck and right arm with numbness and tingling. She reported requiring assistance with ordinary daily activities such as doing her hair and difficulty raising her arms over her head.

Petitioner returned to Dr. Raif's office on December 21, 2012, complaining of continued pain in her cervical spine after trying to do more normal activities. (PX 2, pp. 72-74) She complained that her muscles were very tight. A referral to a neurosurgeon in Hannibal was planned. Petitioner was kept off work pending that referral until January 11, 2013. (PX 2, p. 113) Petitioner returned to Dr. Raif's office on January 11, 2013, reporting continued difficulty and increased pain with activities of daily living. (PX 2, pp. 64-66) The therapist was recommending continued therapy treatments. Petitioner reported numbness and tingling in her right side and arm. Petitioner was having difficulty obtaining an appointment with a neurosurgeon. Petitioner was kept off work pending that appointment and further therapy and assistance was to be provided in setting an appointment.

Petitioner was seen by Dr. Basho on January 15, 2013 for neck and right arm pain. (PX 3, pp. 3-4) Petitioner provided a consistent history of onset. Dr. Basho noted some decreased sensation in the right C5 dermatome, and found significantly limited rotation to the left with "exquisite tenderness" over the C7 and T1 spinous processes. After reviewing the prior MRI and CT scans, Dr. Basho concluded that Petitioner was suffering from a soft tissue sprain of the cervical spine and advised there was no need for surgical intervention. He recommended further physical therapy and that if her pain persisted when she returned in six weeks, he would recommend pain management. Dr. Basho provided Petitioner with an off work slip. (PX 3, p. 6)

Petitioner returned to Dr. Raif's office on February 1 and February 25, 2013. (PX 3, pp. 56-59, 48-51) Petitioner was continuing to experience pain in her neck despite continued therapy and use of medication. A TENS unit was recommended by the therapist. Petitioner remained off work. (PX 2, p. 104)

Petitioner returned to Dr. Basho's office on March 7, 2013, reporting some gains with therapy but persistent pain, and reported continued difficulty with activities of daily living. (PX 3, p. 2) Dr. Basho opined that surgery was not appropriate, but that she should be referred to pain management. He stated that she could perform only seated duties at a desk with no significant lifting, pushing or pulling. (PX 3, p. 5)

Petitioner returned to Dr. Raif's office on March 8, 2013, reporting continued neck pain with stiffness, reduced range of motion and weakness of her arms. She complained particularly of headaches, pain in the right side of her neck and right shoulder. Petitioner had been able to obtain a TENS unit and she was instructed to continue to use it and a referral to Blessing Pain Management was made. It was noted that Petitioner could not return to

her normal work duties and that she was not able to safely drive and turn her head to see other vehicles, and could not sit for more than 2 hours at a time without neck stiffness and pain. It was therefore recommended that she remain off work.

On April 24, 2013, Petitioner was seen for an initial evaluation at Blessing Pain Management. (PX 1, pp. 7-8) Petitioner provided a history of neck pain since a motor vehicle accident in November. She reported pain rated at 5/10 at rest and 9/10 with activity. Petitioner reported that her pain was aggravated by sitting, standing or any movement, particularly turning her head to the left. On examination, Petitioner was very tender at the lower neck and upper thoracic areas, particularly on the right. Her right trapezius was "very spasmed" and limited motion was noted. Dr. Meyer adjusted her pain medications with the plan to reduce her pain so that she could resume physical therapy once the pain was controlled.

Petitioner returned to Dr. Raif's office on May 3, 2013, who noted that the Petitioner was using a different medication prescribed by the pain clinic. (PX 2, pp. 17-20) Petitioner indicated that she was still having a moderate amount of pain, at a 6/10 level. Dr. Raif noted that Petitioner was not permitted to drive with this medication and was still on restrictions of no lifting, pushing or pulling, and was still kept off work.

Petitioner returned to the pain clinic at Blessing Hospital again on May 24, 2013, reporting that she was continuing to suffer from pain in her scapula and middle of the spine that had been there since her accident. (PX 1, pp. 36) Petitioner reported that her pain was aggravated by sitting, standing, bending, lifting, pushing and pulling. Dr. Meyer kept Petitioner on the same medications to allow her body to adjust before changing any of them, and her medications were refilled. Petitioner's medications were refilled and she was advised to return in two months.

Petitioner returned to Dr. Raif's office on May 31, 2013, reporting that her current medications were making her sleepy. (PX 2, pp. 12-15) On examination, it was noted that the Petitioner's remained abnormal and her neck was tender. Her grip strength and range of motion remained decreased on the right. She had tenderness with palpation of the cervical spine and right scapula with very limited range of motion of the cervical spine, which was unchanged. Petitioner's medications were continued and she was advised to follow up in one month. Petitioner returned to Dr. Raif's office on June 28, 2013, noting that her pain management continued and that she had an appointment set for July 30, 2013 to follow up with the pain management. (PX 2, pp. 126 - 128) Petitioner reported that she was still experiencing pain in her neck and right shoulder and that earlier that week it had begun to go down the left side of her neck as well, with spasms in her hand. It was noted that the Petitioner remained unable to drive or work.

On direct examination Petitioner denied having any prior cervical problems; however, Petitioner acknowledged on cross-examination that she had had a CT scan of her neck previously in 2008 following a prior accident when she had been run off the road. Petitioner testified that she had no ongoing problems with her neck or any further medical treatment following that incident.

Petitioner testified that the physical therapy and the TENS unit that she received have not provided her with relief of her pain. Petitioner testified that she is currently receiving pain management treatment through Blessing Hospital, and has appointments schedule there as well as a return appointment with Dr. Raif. Petitioner testified, consistent with the medical records, that she has not been released to return to work since her accident. She testified that she continues to have a lot of stiffness and pain. She testified that she tosses and turns all night and has difficulty getting enough sleep. She testified that she is unable to do basic household chores for a long period without increasing pain. She testified that she tried sweeping and mopping but was unable to move the next day. She confirmed that these are the same kind of activities that she would be required

to perform in her work. Petitioner testified that she remains on pain medication (Vicodin and Gabapentin" and that she has been told that she should not drive while taking these medications. Petitioner testified that someone else had driven her to the hearing site that day.

Ms. Connie Claybourn testified on behalf of Respondent. She has worked for the Respondent since 1998. Her current job title is area administrator in the Pittsfield office. She has worked in that capacity for the past eight years. Part of her job duties involved handling workers' compensation claims. Ms. Claybourn testified that she first spoke with Petitioner following the motor vehicle accident at approximately 4:15 p.m. – 4:30 p.m. on the date of the accident. Ms. Claybourn testified that Petitioner advised her that the accident took place on Vin Fiz Highway while she was in route to see a participant. Ms. Claybourn testified that she was surprised the following day to learn that the accident took place where it did. Ms. Claybourn testified that it was never mentioned that Petitioner was getting a soda at the time of the accident. Ms. Claybourn testified that Petitioner is allowed to get a drink of water at participants' homes. Ms. Claybourn testified that Tammy Booth no longer works for Community Care Systems.

Ms. Lynn Ottwell testified on behalf of Respondent. She will have worked for Respondent two years in September. Currently she works in billing and payroll. When she first started she worked as a field supervisor for approximately one year. As a field supervisor, Ms. Ottwell would go to participants' homes and do quality visits every six months and assess how the home care aide was doing.

Ms. Ottwell has lived in Pike County all her life and as a field supervisor she traveled to all the towns. Ms. Ottwell is familiar with the participants that were referenced on Jill Street and outside of Nebo. The participant on Jill Street had city water. The participant outside of Nebo had well water and she was not aware of any water issues with either participant. Ms. Ottwell testified that the Nebo Community Center was on Main Street, however it could have moved. Ms. Ottwell testified that she has traveled from the participant's residence in Jill Street to the participant's residence outside of Nebo. She estimated that it would take 15 minutes to get from Pittsfield to the intersection at the Vin Fiz Highway and then approximately 8-10 minutes to go to the participant's residence in rural Nebo. Ms. Ottwell testified that it is Respondent's policy that whenever a home health aide stops to get something to drink they are to report it because they are not to be paid for any personal time. Also, the home health aides are to stay on a strict schedule when seeing participants. Ms. Ottwell testified that there are several locations directly on route where Petitioner could have stopped to buy a soda. The first is directly across Jill Street where there is a park with a vending machine. Ms. Ottwell also testified that Barb's Café is located directly at the intersection where County Highway from Pittsfield meets Vin Fiz Highway.

### **The Arbitrator Concludes:**

#### **1. Petitioner's Credibility.**

A pivotal issue in this case is Petitioner's credibility. The Arbitrator having seen and listened to Petitioner and having reviewed the record in its entirety cannot conclude that Petitioner was a credible witness. As will be pointed out below there were many discrepancies between her testimony and the other evidence in the record, the latter of which has been given more weight as it appears inherently more trustworthy.

#### **2. Accident .**

The parties do not really dispute that Petitioner was a "traveling employee" at the time of her accident. For that matter, they do not really dispute that she was involved in a motor vehicle accident. The issue is whether that accident is a compensable one under the Illinois Workers' Compensation Act. The test for determining whether an injury to a traveling employee arose out of and in the course of her employment is the reasonableness of the conduct in which she was engaged and whether the conduct might normally be anticipated or foreseen by the employer. *Howell Tractor & Equipment Company v. Industrial Commission*, 778 Ill.2d 567, 573-74, 403 N.E.2d 215, 38 Ill.Dec.127 (1980). Petitioner testified that in between participants she went off route and intended to buy a soda at the time of the accident. The Arbitrator, however, does not find this testimony to be credible.

The evidence does not support Petitioner's testimony that she was traveling to the Nebo Community Center to purchase a soda at the time of the motor vehicle accident. The contemporaneous documents fail to support this. Ms. Claybourn testified that on the date of the accident, Petitioner advised her that the accident took place on Vin Fiz Highway while she was traveling to see a participant. Ms. Claybourn testified that the following day after she received the police report with the actual location of the accident, Petitioner at no time indicated that she was traveling to the Community Center to buy a soda. In her incident report completed by Petitioner the following day, there is no mention that Petitioner was traveling to the Community Center to buy a soda. Petitioner simply noted that she was in route to a participant's home at the time of the accident. In her travel log on the date of the motor vehicle accident, there is no mention that Petitioner was traveling to the Community Center to buy a soda. Instead, Petitioner documented that she was in route to a participant's home when the crash occurred. On 12/11/2012 Petitioner provided a recorded statement to the adjuster. Similarly, in her recorded statement, Petitioner made no mention that she was traveling to the Community Center to purchase a soda at the time of the crash. Instead, Petitioner advised that the accident took place when she was on the county highway and turning onto Vin Fiz Highway. According to the Illinois Motorist Report, she was going straight when she observed another car backing up. The Arbitrator finds it significant that the crash took place blocks from Petitioner's residence. Petitioner failed to prove that her actions were reasonable and foreseeable by Respondent. Petitioner's claim for compensation is denied.

### 3. Causal Connection.

Even assuming, arguendo, that Petitioner's accident was compensable Petitioner has failed to prove that her current condition of ill-being is causally connected to the accident. The bottom line is that the Arbitrator does not believe that Petitioner was injured to the extent she is claiming at the time of the accident. Again, this is based upon Petitioner's credibility. In support thereof, the Arbitrator notes that the investigating police officer described the accident and Petitioner's injuries as "minor." When seen at the emergency room Petitioner specifically denied hitting her head on anything. However, as the investigation and claim has progressed, Petitioner's description of the accident and the injuries she sustained therein have increased. For example, by the time she gave her recorded statement, she stated she "slammed" on her brakes and her head hit the window. While Petitioner testified at arbitration she was on medication when she gave her statement, the transcript does not suggest any impairment or confusion. Additionally, Petitioner denied any prior cervical problems on direct examination; however, when asked on cross-examination about it she acknowledged undergoing a CT scan in 2008. Her 2012 Cervical MRI clearly references a cervical CT scan being performed in August of 2008. Additionally, there is reference to cervical spine x-rays taken on September 7, 2012 just a few months before this accident. Petitioner's lack of forthrightness on direct examination is concerning and undermines her credibility overall. Furthermore, the records from Petitioner's primary physician, Dr. Raif, do not pre-date November 27, 2012. The Patient Information Sheet printed on June 11, 2013 indicates Petitioner's

14IVCC0166

“problem list” includes thoracic and chronic low back pain pre-dating the motor vehicle accident by just a few weeks. (PX 2) All in all, Petitioner’s ongoing complaints of pain seem out of proportion for the nature of the accident (based upon police reports and the initial hospital visit) and, therefore, the Arbitrator is unable to conclude Petitioner’s current condition of ill-being is causally related to the accident. All other issues are moot.

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14IVCC0166

STATE OF ILLINOIS )  
 ) SS.  
 COUNTY OF JEFFERSON )

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Lewis Bebout,

Petitioner,

vs.

NO: 10 WC 45768

State of Illinois/ Pinckneyville Correctional Center,

Respondent.

14IWCC0167

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, notice, manifestation date, temporary total disability, medical expenses, permanent partial disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.


IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 5, 2013 is hereby affirmed and adopted.

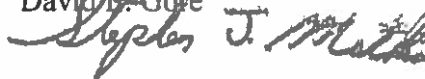
IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

DATED: MAR 07 2014

DLG/gal  
 O: 2/27/14  
 45

  
 David L. Goff

  
 Stephen J. Mathis

  
 Mario Basurto

Mario Basurto

ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF ARBITRATOR DECISION

**BEBOUT, LOUIS**

Employee/Petitioner

Case# **10WC045768**

**SOI/PINCKNEYVILLE CORR CTR**

Employer/Respondent

141760926

On 8/5/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.06% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0969 THOMAS C RICH PC  
#6 EXECUTIVE DR  
SUITE 3  
FAIRVIEW HTS, IL 62208

0502 ST EMPLOYMENT RETIREMENT SYSTEMS  
2101 S VETERANS PKWY\*  
PO BOX 19255  
SPRINGFIELD, IL 62794-9255

0588 ASSISTANT ATTORNEY GENERAL  
MOLLY WILSON-DEARING  
601 S UNIVERSITY AVE SUITE 102  
CARBONDALE, IL 62901

0498 STATE OF ILLINOIS  
ATTORNEY GENERAL  
100 W RANDOLPH ST  
13TH FLOOR  
CHICAGO, IL 60601-3227

1350 CENTRAL MGMT SERVICES RISK MGMT  
WORKERS' COMPENSATION CLAIMS  
PO BOX 19208  
SPRINGFIELD, IL 62794-9208

CERTIFIED as a true and correct copy  
pursuant to 820 ILCS 305/14

AUG 5 2013



  
KIMBERLY B. JANAS Secretary  
Illinois Workers' Compensation Commission

STATE OF ILLINOIS )  
)SS.  
COUNTY OF Jefferson )

- |                                     |                                       |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/>            | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/>            | Rate Adjustment Fund (§8(g))          |
| <input type="checkbox"/>            | Second Injury Fund (§8(e)18)          |
| <input checked="" type="checkbox"/> | None of the above                     |

ILLINOIS WORKERS' COMPENSATION COMMISSION  
ARBITRATION DECISION

14IWCC0167

Lewis Bebout  
Employee/Petitioner

Case # 10 WC 45768

v.

Consolidated cases: \_\_\_\_\_

State of Illinois/Pinckneyville Corr. Ctr.  
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Joshua Luskin**, Arbitrator of the Commission, in the city of **Mt. Vernon**, on **6/6/13**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☒ What was the date of the accident?
- E. ☒ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ What temporary benefits are in dispute?  
☐ TPD ☐ Maintenance ☒ TTD
- L. ☒ What is the nature and extent of the injury?
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other \_\_\_\_\_

## FINDINGS

14IWCC0167

On 11/22/10, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned \$86,812.00; the average weekly wage was \$1,669.46.

On the date of accident, Petitioner was 48 years of age, *married* with 0 dependent children.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *has not* paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of \$0 for TTD, \$0 for TPD, \$0 for maintenance, and \$0 for other benefits, for a total credit of \$0.

Respondent is entitled to a credit of \$if any under Section 8(j) of the Act.

## ORDER

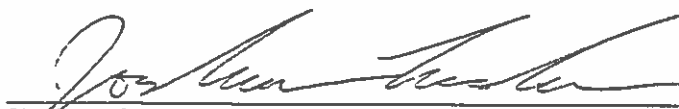
Respondent shall pay the reasonable and necessary medical services as provided in Sections 8(a) and 8.2 of the Act. Respondent shall be given a credit for any medical benefits that have been paid through its group carrier, but shall hold petitioner harmless for any recoupment efforts for same, as provided in Section 8(j) of the Act.

Respondent shall pay Petitioner temporary total disability benefits of \$1,112.97/week for 16 & 6/7 weeks, the period of 9/27/11 through 1/22/12, inclusive, as provided in Section 8(b) of the Act. Respondent shall have credit for any salary, extended benefits or temporary total disability benefits already paid.

Respondent shall pay Petitioner permanent partial disability benefits of \$669.64/week for 91.6 weeks, because the injuries sustained caused the 10% loss of the left and right hands (41 weeks) and the 10% loss of the left and right arms (50.6 weeks), as provided in Section 8(e) of the Act.

**RULES REGARDING APPEALS** Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

**STATEMENT OF INTEREST RATE** If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

  
Signature of Arbitrator

August 4, 2013  
Date

AUG 5 - 2013

On November 22, 2010, the petitioner saw Dr. David Brown, a hand specialist. He discussed the job history and noted a history of symptoms beginning in approximately March 2010. Dr. Brown noted clinical signs of carpal and cubital tunnel syndrome and prescribed EMG testing. PX3. The EMG study was done that day and demonstrated moderate carpal and cubital tunnel syndrome, bilaterally. PX4. The petitioner also had a symptomatic right forearm cutaneous neuroma from a laceration approximately eleven years prior. Dr. Brown prescribed splints and medication and instructed him to follow up. On December 20, 2010, the petitioner described no relief from conservative management, and Dr. Brown recommended surgery. PX3.

14IWCC0167

The respondent secured a Section 12 records review from Dr. James Williams in April 2011. Following review of a job analysis of a Pinckneyville corrections officer he concluded that the job duties would not have caused or accelerated the condition of carpal or cubital tunnel syndrome. RX12.

The petitioner thereafter sought treatment with Dr. Paletta on August 17, 2011. Dr. Paletta echoed Dr. Brown's diagnosis and treatment recommendation. PX5. On September 27, 2011, Dr. Paletta performed left carpal and cubital tunnel release surgery. On November 15, 2011, Dr. Paletta performed the same procedure on the right elbow and wrist. PX7. The petitioner was prescribed standard postoperative rehabilitation.

On December 5, 2011, Dr. Paletta noted healing of the surgical sites and the petitioner was released to light duty with no cell-house work. On January 23, 2012, the petitioner reported substantial relief of symptoms and Dr. Paletta released him to regular duty work. On April 18, 2012, the petitioner noted "he is feeling great" and "[v]irtually, all his pain has resolved." Dr. Paletta noted an excellent outcome with a normal physical examination, placed him at MMI and discharged him from care. PX5.

Dr. Williams performed a supplemental records review of the claimant's medical records. He opined that the job duties would not have caused the claimant's condition, but concurred with the medical diagnosis, treatment course and surgical intervention. He maintained those opinions in deposition. RX7.

Dr. Paletta testified in deposition in support of a causal connection and the treatment course. PX11. Dr. Paletta noted that there are a number of idiopathic comorbidities which are linked to increased risk of carpal and/or cubital tunnel syndrome, such as hypertension, diabetes, thyroid imbalance, and obesity, and that the claimant did not suffer from these conditions. He concluded that the petitioner's employment duties had played a causal role in the development of the condition, prompting the surgeries.

### **OPINION AND ORDER**

#### **Accident, Causal Connection, and Manifestation Date**

Given the overlapping issues between these points, the Arbitrator will address them jointly. The petitioner is relying on a repetitive trauma theory, as opposed to an acute injury. In such cases relying on the repetitive trauma concept, the claimant generally relies on medical testimony to establish a causal connection between the claimant's work and the claimed disability. See, e.g., *Peoria County Bellwood*, 115 Ill.2d 524 (1987); *Quaker Oats Co. v. Industrial Commission*, 414 Ill. 326 (1953).

The Arbitrator notes that the credibility of the petitioner's testimony was not bolstered by his courtroom demeanor. His responses on cross-examination demonstrated both a bellicosity that could not be simply explained by the strain of the litigation

process, as well as evasiveness on certain issues related to his job activities. However, the claimant's testimony that was credible surrounded two important points: first, that the duties of a major were significantly more administrative in nature than those duties he faced in lower ranks, including substantially increased computer usage and paperwork; and, second, that it was these duties which increasingly prompted the claimant's symptoms, rather than some more physically robust ones he had previously faced.

Both Dr. Paletta and Dr. Williams note a general lack of comorbidities which would normally spur such conditions, as well as concurring in the diagnosis and treatment plan. Having reviewed the medical records as well as the depositions, the Arbitrator finds Dr. Paletta somewhat more persuasive in this instance and finds that the claimant has demonstrated accident and causal relationship, and further has established November 22, 2010 as a not inappropriate manifestation date within the guidance of *Durand v. Industrial Commission*, 224 Ill.2d 53 (2006).

### Notice

Given the manifestation date established above, the claimant provided timely notice of his accident within the 45 days required by the Act by both reporting it and filing the Application for Adjustment of Claim. See RX2 and Arb.Ex.II.

### Medical Services Provided

The medical services provided were disputed based on accident and causal relationship, not the reasonableness of the care. Given the above findings, the respondent is directed to pay the medical bills identified in PX1 pursuant to Section 8(a) and subject to the limits of Section 8.2 of the Act. Respondent shall receive credit for any and all amounts previously paid but shall hold the petitioner harmless, pursuant to 8(j) of the Act, for any group health carrier reimbursement requests for such payments.

### Temporary Total Disability

The respondent disputed TTD based upon its accident and causal relationship disputes. The petitioner was prescribed off work from September 27, 2011, through December 5, 2011, and restricted work from then until his full duty release on January 23. The work restriction was against cell house work; it is not clear whether this is effectively full duty work for a major. The Arbitrator cannot infer such, though the stipulation sheet claiming only 12 & 3/7 weeks of TTD liability certainly suggests he was working during at least some part of that time, as the period of restriction from September 27 through January 22, inclusive, comes to 118 days, or 16 & 6/7 weeks.

The respondent shall pay the petitioner TTD benefits of \$1,112.97 per week for 16 & 6/7 weeks. The respondent shall have credit for any temporary total disability or

extended benefits paid to the claimant during this period, as well as credit for any salary paid if the claimant did return to work during that period. Should a group disability carrier demand reimbursement for any such benefits paid during that period, the respondent shall hold the petitioner harmless for any credit claimed, pursuant to Section 8(j) of the Act.

#### Nature and Extent of the Injury

The Arbitrator finds the petitioner's employment resulted in the development of the carpal and cubital tunnel syndrome in each elbow and wrist, which was corrected surgically. Dr. Paletta noted an excellent outcome with effectively complete symptom relief, and the claimant returned to his regular job activities for almost a year before his seniority-based retirement.

The respondent shall pay the petitioner the sum of \$669.64/week for a further period of 91.6 weeks, as provided in Section 8(e) of the Act, as the injuries sustained caused permanent loss of use of each of the petitioner's arms to the extent of 10% thereof, as well as each of the petitioner's hands to the extent of 10% thereof.

STATE OF ILLINOIS     )  
                                   ) SS.  
 COUNTY OF LA SALLE    )

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/> Modify down	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jennifer Reuter,

Petitioner,

14IWCC0168

vs.

NO: 09 WC 42924

LCN Closers, a/k/a Ingersoll Rand,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, temporary total disability benefits, medical expenses, the two-doctor rule and permanency, modifies the Decision of the Arbitrator as stated below, and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

After a complete review of the record, the Commission finds that Petitioner's claim that her right lateral epicondylitis was arose out of and in the course of her employment with Respondent due to overuse and repetitive work and is causally related to her work for Respondent is not supported by the evidence. In finding so, the Commission notes that Petitioner was laid off from Respondent's employ on August 7, 2009. (T.25) The Commission also notes that Petitioner initially testified that she started to have right arm symptoms in March 2010. (T.28) However, Petitioner later testified that she notified the company nurse about her right arm symptoms a short time after she was laid off (T.45-46), contradicting her earlier testimony that she started having right arm symptoms about eight months after she stopped working for Respondent. The Commission further notes that the medical records indicate that Petitioner complained of only left arm symptoms between August 2009 and March 2010 (PX2, PX9), which also contradicts Petitioner's claim that she had right arm symptoms shortly after being laid off. Furthermore, Petitioner's treating physician, Dr. George Lane, testified at his evidence deposition that it is unusual for a patient to start having symptoms of epicondylitis after the patient has stopped performing repetitive activity. (PX8-pg.20) Dr. Lane explained that, in general terms, lateral epicondylitis injury is a result of overuse and, while still opining that

14IWCC0168

Petitioner's work for Respondent contributed to Petitioner's lateral epicondylitis, explained that "months after quitting work she must have—something else must have irritated it further along." (PX8-pgs.20,23) In light of Dr. Lane's explanation, the Commission finds Dr. Lane's opinion that Petitioner's right lateral epicondylitis is causally related to her work for Respondent questionable since, as noted earlier, Petitioner's symptoms appeared eight months after she stopped working for Respondent and that even Dr. Lane felt that since Petitioner had stopped working something else must have irritated/aggravated Petitioner's right arm condition.

Instead, the Commission finds the findings and opinions of Dr. John Fernandez, Respondent's Section 12 examiner, more persuasive than those of Dr. Lane. Dr. Fernandez found no objective findings indicating that Petitioner was suffering from right lateral epicondylitis. (RX2) Dr. Fernandez explained that Petitioner "does not have a traumatic mechanism and...despite the fact that she had been off work for nearly a year her symptoms have actually worsened in severity and she has even developed similar symptoms on the right side while off work. I simply have no way to explain or connect the two. Therefore...I cannot consider her condition as work related." (RX2) Based on the timeline of Petitioner's development of right arm symptoms and Dr. Fernandez's findings, the Commission finds that Dr. Fernandez's opinion that Petitioner's right arm condition is not causally related to her work with Respondent is supported by the record.

Therefore, based on the totality of the evidence, Petitioner has failed to establish that she suffered a work-related right arm injury as a result of her work for Respondent. The Commission hereby reverses the Arbitrator's finding on the issue, finds that Petitioner did not sustain accidental injuries to her right arm arising out of and in the course of her employment with Respondent on October 15, 2008 and that her right arm condition is not causally related to her work for Respondent, and vacates the award of medical expenses for treatment of Petitioner's right arm and the permanency award of 12.5% loss of use of the right arm.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on January 28, 2013, is hereby modified as stated above, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$320.00 per week for a period of 69-1/7 weeks, from August 7, 2009 through December 3, 2010, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$320.00 per week for a period of 25.3 weeks, as provided in §8(e)10 of the Act, for the reason that the injuries sustained caused the 10% loss of use of the left arm.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay all reasonable and necessary medical expenses regarding Petitioner's left arm condition only, as provided in §8(a) and §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner

14IWCC0168

interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$30,300.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED:  
DRD/ell  
o-02/25/14  
68

MAR 07 2014



Daniel R. Donohoe



Thomas J. Tyrrell



Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF ARBITRATOR DECISION

14IWCC0168

REUTER, JENNIFER

Employee/Petitioner

Case# 09WC042924

LCN CLOSERS A/K/A INGERSOLL RAND

Employer/Respondent

On 1/28/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.09% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0190 LAW OFFICES OF PETER F FERRACUTI  
JENNIFER KIESEWETTER  
110 E MAIN ST PO BOX 859  
OTTAWA, IL 61350

1860 CACCHILLO LAW GROUP LLC  
ANDREW THOMAS  
180 N LASALLE ST SUITE 2850  
CHICAGO, IL 60601

STATE OF ILLINOIS )  
 )SS.  
 COUNTY OF LaSalle )

☐ Injured Workers' Benefit Fund (§4(d))  
☐ Rate Adjustment Fund (§8(g))  
☐ Second Injury Fund (§8(e)18)  
☒ None of the above

# ILLINOIS WORKERS' COMPENSATION COMMISSION ARBITRATION DECISION

**Jennifer Reuter**  
 Employee/Petitioner

Case # **09 WC 42924**

v.

Consolidated cases: \_\_\_\_\_

**LCN Closers a/k/a Ingersoll Rand**  
 Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **George Andros**, Arbitrator of the Commission, in the city of **Ottawa**, on **11/29/2012**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

## DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☒ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ What temporary benefits are in dispute?  
☐ TPD      ☐ Maintenance      ☒ TTD
- L. ☒ What is the nature and extent of the injury?
- M. ☒ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other \_\_\_\_\_

## FINDINGS

On **10/15/2008**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned **\$22,880.00**; the average weekly wage was **\$440.00**.

On the date of accident, Petitioner was **33** years of age, *married* with **3** dependent children.

Petitioner *has not* received all reasonable and necessary medical services.

Respondent *has not* paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **\$0** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$0** for other benefits, for a total credit of **\$1,396.56**.

Respondent is entitled to a credit of **\$5,542.55** under Section 8(j) of the Act.

## ORDER

Respondent shall pay Petitioner temporary total disability benefits of \$320.00/week for 69 1/7 weeks, commencing 8/7/2009 through 12/3/2010, as provided in Section 8(b) of the Act.

Respondent shall pay reasonable and necessary medical services of \$5,316.06, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of \$320.00/week for 56.925 weeks, because the injuries sustained caused the 12.5% loss of the right arm and 10% loss of the left arm, as provided in Section 8(e) of the Act.

**RULES REGARDING APPEALS** Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

**STATEMENT OF INTEREST RATE** If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

#01 George J. Lindros  
Signature of Arbitrator

January 25, 2013  
Date

Petitioner Jennifer Reuter began working at LCN Closers in 2007. She testified that she was first an employee of Manpower doing temporary work but was eventually hired on as a regular employee by LCN in 2007. The first two to three months of her employment, her job required folding boxes.

Ms. Reuter testified that she was then moved to the 40/40 line where she remained until she began to have her left arm symptoms. On the 40/40 line, she was the lead of line which required her to take the orders off the computer, printout the orders, and take 8 pound cylinders, lay them on a table, and put each part into the cylinders. She testified that she would have a quota of 1,257 parts per shift. She was handling the parts with both hands and would have to push totes full of the cylinders down the line. Some of the parts, including the door arms, may weigh up to 2 pounds each. The orders varied. She estimated that she would push nearly 200 boxes of parts down the line per hour. She would work with her right arm to put the parts into the totes and push the totes down the line with her left arm. This movement would physically require her to push the totes using her left arm from elbow to wrist across a rough surfaced table. She was not working on a conveyor belt surface.

Petitioner testified that prior to her employment at LCN Closers she had never had right or left arm symptoms of this type. She began to develop symptoms that her left arm was on fire and swollen from the elbow to the wrist. She would use over the counter Motrin. On October 15, 2008, she testified that she reported her symptoms to John Jensen, a utility worker, who advised her that he would report it to her supervisor. She was told this was the reporting procedure. On or about October 18, 2008, she was approached by Ken Colton, her supervisor, who advised her to report to the company nurse.

Upon direction of the company nurse, the Petitioner testified that she then followed up with her family physician. She was also moved by the company to another line, the 40/10 line, where she was advised to use her right arm and hand to put screws in boxes at the end of the line.

Petitioner saw Dr. Martin Faber in Princeton, Illinois, on November 21, 2008. (PX2). He indicated that the pain started three weeks prior from lifting, and diagnoses her with left epicondylitis. (PX2). Petitioner returned to Dr. Faber on January 9, 2009, February 13, 2009, and March 20, 2009. (PX2).

Petitioner started physical therapy at Perry Memorial Hospital on January 14, 2009, and completed 48 visits. (PX9). Petitioner was discharged on June 2, 2009. (PX9). On that date, Petitioner was still reporting some discomfort with certain jobs. (PX9).

Petitioner saw Dr. Lisa Snyder at the Institute of Physical Medicine and Rehabilitation in Peoria, Illinois, on May 7, 2009 for an EMG. (PX11). The EMG was normal. Dr. Snyder indicated that Petitioner had a recent flare-up about two weeks prior and thought it was related to the changes in her job. Petitioner was placed on a work restriction that limited lifting to 5 pounds, and was encouraged to alternate her jobs to minimize the amount of repetitive activity at one time.

On August 6, 2009, Petitioner testified that she was laid off from her employment with LCN Closers. Shortly following her layoff, she testified that she contacted human resources at LCN inquiring about coverage under workers' compensation due to right arm symptoms that she was now experiencing as well as her left arm continued treatment. Up until this time, her medical care was being covered by Respondent.

Dr. George Lane, orthopedic surgeon of Comprehensive Orthopedics in Peoria, Illinois, testified via evidence deposition on December 20, 2010. (PX8). Petitioner first saw Dr. Lane on October 20, 2009. (PX7, PX8 at 5). At that time, Petitioner complained of pain, numbness, and tingling in her left arm. (PX7, PX8 at 6). Petitioner had stated that she injured her arm at work well over a year before she saw Dr. Lane. (PX7, PX8 at 6). After reviewing an EMG and doing an examination, Dr. Lane recommended an anti-inflammatory Feldene and a repeat EMG. (PX7, PX8 at 8).

On June 8, 2010 Dr. John Fernandez performed a section 12 exam at the behest of the Respondent herein. Although Dr. Fernandez confirmed her work tasks may be highly repetitive and also admitted that she had bilateral arm pain, he did not feel that her symptoms were work-related. He was unable to give an actual diagnosis, but did not seem to suggest or indicate in any way that Petitioner was not having legitimate pain symptoms.

Petitioner next saw Dr. Lane on June 24, 2010. (PX7, PX8 at 8). At that time, Petitioner was complaining of pain, numbness, and tingling in both arms. She stated at that time that her left arm had been bothering her for about two years around the elbow. (PX7, PX8 at 8).

Dr. Lane made the medical diagnosis of bilateral carpal and cubital tunnel syndrome that had gone untreated for almost two years and was getting worse. (PX7, PX8 at 9). He recommended an anti-inflammatory Relafen and another EMG. (PX7, PX8 at 9).

Petitioner again saw Dr. Snyder for another EMG on July 15, 2010. (PX11). The EMG was normal.

On the next visit with Dr. Lane on July 20, 2010, Petitioner had full range of motion in both arms but complained of aching in the wrist and elbow. She stated that most of her pain was on the lateral side. (PX7, PX8 at 10). Dr. Lane's diagnosis was lateral epicondylitis. (PX7, PX8 at 10). Dr. Lane recommended another anti-inflammatory Mobic and Darvocet for pain, and suggested that if those did not help, they would consider corticosteroid injections. (PX7, PX8 at 10). On the next visit August 3, 2010, Petitioner was doing a little better. It was recommended that she continue with Mobic. (PX7, PX8 at 10). On August 24, 2010, Petitioner stated that the Mobic was not helping, it upset her stomach, and she was in pain again, so the medication was discontinued. Dr. Lane recommended going to the pain clinic and getting MRI's of both elbows. (PX7, PX8 at 11).

On August 31, 2010, Dr. Lane reviewed the MRI, which showed inflammation and neuritis of both ulnar nerves. (PX7). Dr. Lane testified that it is consistent with the cubital tunnel complaints. (PX8 at 11). Petitioner stated that since being off Mobic the arms had been bothering her more. (PX7). At that time, Dr. Lane recommended that she get back on the Mobic since it helped and advised her to go to the pain clinic. (PX7, PX8 at 12).

Dr. Lane testified that on December 20, 2010, his current diagnosis was lateral epicondylitis, and that this was not something that would show up on the EMG. (PX8 at 25-26).

Dr. Lane testified that Petitioner's repetitive work at her job could have contributed to the conditions of ill-being in her arms. He stated that repetitive work in certain circumstances can irritate the hands and wrists and elbows and the median and ulnar nerve. (PX8 at 13). Dr. Lane further stated that the condition can worsen even though she's removed from the work environment if it was irritated enough. (PX8 at 13). At that time, Dr. Lane testified that he believed Petitioner could return to work but under restrictions. (PX8 at 15). Dr. Lane would recommend no repetitive work, no vibratory or air tools, and lifting restrictions to a weight limit of 30-35 pounds. (PX8 at 15).

Petitioner saw Dr. Randipsingh (Randy) Bindra at Loyola University Medical Center on September 20, 2010. (PX13 at 9). Dr. Bindra's opinion was that Petitioner may have started out with lateral epicondylitis. (PX13 at 10). Dr. Bindra recommended a pain clinic or acupuncture. He did not think surgery would be helpful because Petitioner's pain fluctuated and was not constant and present in one spot. (PX13 at 11).

Petitioner went to the pain clinic on November 5, 2010, at Illinois Valley Community Hospital in Peru, Illinois, and saw Dr. Ronald Kloc. (PX12 at 8). Dr. Kloc diagnosed her with lateral tendonitis a/k/a tennis elbow in both elbows. He recommended injections for tennis elbow. (PX12 at 8). Petitioner returned to Dr. Kloc on November 11, 2010, for injections in both elbows. (PX12 at 23). Petitioner returned to Dr. Kloc on December 3, 2010. (PX12 at 35).

At that time, Petitioner rated her pain at 1/10 in her right elbow and 4/10 in her left, which were similar to the ratings she gave when she first saw Dr. Kloc. At that time, Dr. Kloc told her there were no other injections or interventions he could do.

On January 14, 2011, Petitioner accepted employment as a CNA. She testified that between August 7, 2009 through January 13, 2011, she had not worked and had continued under medical care.

Respondent offered a surveillance video at hearing which showed Petitioner at a car wash using a power washing hose to spray her car. The visual observation did not show any significant rotational or extreme extension or flexion at the impaired joints to indicate upon observation that she was violating medical orders or is a type of symptom magnifier, to use the jargon of the industry.

Petitioner returned to Dr. Lane on April 1, 2011. (PX19 at 4). In his notes, Dr. Lane indicated that patient went to the pain clinic in November 2010, had injections, tried NSAID and cream without results, and now has a job

and her bilateral elbow pain has flared up again. At that time, Petitioner was advised to begin physical therapy, and if no improvement she would be placed on light duty work. (PX19 at 4). Petitioner started another round of physical therapy at Perry Memorial Hospital on April 20, 2011, and completed 12 sessions. (PX20 at 25).

On June 14, 2011, Petitioner again saw Dr. Lane, complaining of bilateral elbow pain, the left worse than the right. (PX19 at 2).

He recommended that she get a second opinion regarding her elbows and need for surgical release of tennis elbow. He referred her to Dr. Jason Anane-Sefah at Great Plains Orthopaedics in Peoria, Illinois. (PX19 at 3).

Petitioner first saw Dr. Anane-Sefah on July 27, 2011. (PX14 at 49). Dr. Anane-Sefah diagnosed her with elbow pain with lateral epicondylitis and medial epicondylitis. The plan was to obtain an inflammatory workup. On August 10, 2011, Dr. Anane-Sefah again saw Petitioner. (PX14 at 46). The laboratory results revealed a negative ANA screening. Petitioner received injections in both issues for her bilateral lateral epicondylitis. Because of Petitioner's elevated ESR, she was sent for evaluation to rheumatology. At this time, Dr. Anane-Sefah prescribed her off work. (PX14 at 6).

Petitioner returned to Dr. Anane-Sefah on April 9, 2012. (PX22 at 1). Petitioner stated that she received approximately two months of relief from her lateral epicondylar injection. Petitioner stated that the pain now had slowly increased and was worse than before. At that time his diagnoses were bilateral elbow pain with sensitivity, bilateral lateral epicondylitis, and concern for inflammatory arthritis. Dr. Anane-Sefah discussed with Petitioner her pain at light touch and stated this may be consistent with fibromyalgia. Petitioner wanted to repeat injections.

At hearing, Ms. Reuter testified that she does have braces that she wears as needed for her arms. She has not returned to Dr. Anane-Sefah and has not had any long term relief from the medications or injections. She is able to continue work as a CNA but does have some days that are worse than others regarding pain and her ability to perform her work. She testified that her arms are really tense and feel tight. She finds it hard to bend them at times as it feels like her tendons are pulled. She has difficulty sleeping.

### **CONCLUSIONS OF LAW**

**In support of the Arbitrator's Decision as to C. WHETHER AN ACCIDENT OCCURRED WHICH AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT WITH RESPONDENT, the Arbitrator finds the following:**

Petitioner testified as to a repetitive job which would require her to place parts up to 2 pounds into cylinders which weighed 8 pounds at a rate of at least 1,257 parts per day. She testified that she would have to use her right arm to place the parts into the cylinders and her left arm to push the totes across a rough surface to the other workers on the line. She estimated on average she would push 200 boxes of parts down the line per hour. The boxes were put into totes that she would push. This was the subject of precise, insightful cross examination on each and every detail of her job in a well prepared fashion. Notwithstanding, the worker showed a clear and convincing knowledge of the repetitive nature of her work in terms of repetitiveness, duration and body mechanics. She was very very articulate not always seen in that venue.

On October 15, 2008, Ms. Reuter testified that her left arm symptoms were so bad that she reported to a utility worker that she was having pain. A few days later, she was advised by her supervisor to see the company nurse. None of this testimony was rebutted. Respondent did not offer any witnesses from the plant regarding the events surrounding October 15, 2008.

Petitioner's medical treatment records all contain a consistent history of Petitioner relating her left arm symptoms to beginning at work on or about October 2008 and her right arm symptoms beginning in 2009 after she had been placed on a different line which required her to almost exclusively use her right arm to fill cylinders with screws..

Based upon the totality of the evidence, including but not limited to the credible testimony of Petitioner as to her highly repetitive job duties, the sequence of events, the lack of any testimony to the contrary, and the consistent medical treatment records, the Arbitrator finds as a matter of fact and as a conclusion of law that Petitioner herein sustained repetitive trauma accidental injuries which arose out and in the course of her employment with Respondent and manifested on October 15, 2008.

That is the manifestation date ascribed by the Arbitrator as the date that her symptoms became so bad that she reported her complaints to her employer and was referred for medical treatment.

In support of the Arbitrator's Decision as to E. WHETHER TIMELY NOTICE OF THE ACCIDENT WAS GIVEN, the Arbitrator finds the following:

The Petitioner testified that she gave notice to a utility worker on October 15, 2008 and that a few days later she was approached by Ken Colton, her supervisor, and advised to follow up with the company nurse. Respondent did not offer the testimony of any of these people to rebut the testimony of Petitioner.

Further, Petitioner testified that she was put on restrictions by Dr. Faber and moved to another line of the factory where she was able to use predominately her right hand and arm. This also was not rebutted.

Based upon the totality of the evidence including credible testimony of Petitioner and the lack of any evidence to the contrary, the Arbitrator finds as a matter of fact and as a conclusion of law that Petitioner gave proper notice to Respondent of the symptoms that she was experiencing due to her repetitive work tasks.

In support of the Arbitrator's Decision as to F. WHETHER PETITIONER'S CURRENT CONDITION OF ILL-BEING IS CAUSALLY RELATED TO THE ACCIDENT, the Arbitrator finds the following:

Petitioner testified to job duties which included significant repetitive activity with both upper extremities particularly from the elbow and wrist areas. Dr. Faber and Dr. Snyder both mention the repetitive job in their initial medical treatment records. In fact, Dr. Snyder specifically notes that Petitioner's condition has flared up and that she should alternate her work activities to avoid the repetitive duties in an attempt to manage her symptoms.

Petitioner testified that she did not have any symptoms similar to these types of symptoms prior to her employment with LCN Closers. The only suggestion in the medical records to any symptoms prior was years prior to her employment with a brief visit to a family physician when she worked at KFC.

There was no medical opinion giving any indication that the minor visit years prior to this even included the same type of symptoms or condition or was in any way significant to these specific symptoms several years later. Petitioner did not even recall having any prior medical treatment.

Dr. Lane testified he felt that Petitioner's current bilateral arm conditions were causally related to her repetitive work duties with LCN Closers. He testified that these are the types of activities that could cause or aggravate these median and ulnar nerve conditions and symptoms.

Dr. Faber, Dr. Snyder, Dr. Lane, Dr. Bindra, Dr. Kloc, and Dr. Anane-Sefah all rendered a diagnosis of lateral epicondylitis.

Respondent's section 12 examiner, Dr. Fernandez, could not render a diagnosis. Although he admitted that Petitioner's job appeared to be highly repetitive, he felt that she may have another condition and recommended other testing. He did not deny or state that he had any suspicion as to the validity of her pain complaints.

Based upon the greater weight of the evidence, the credible testimony of Petitioner, the testimony of Dr. Lane, and the consistent medical treatment records of all of her other treating physicians as to the diagnosis of bilateral lateral epicondylitis, the Arbitrator finds that Petitioner has proven with a preponderance of the evidence Petitioner's current condition of ill-being regarding her bilateral upper extremities is as a matter of fact and law, causally related to her repetitive work activities manifested on the date ascribed above and in the Award.

The prevailing medical opinions above are more persuasive in this particular case than those of Dr. Fernandez. Giving due to Dr. John Fernandez, the Arbitrator notes the condition is truly multi factorial, however.

In support of the Arbitrator's Decision as to J. WHAT AMOUNT OF REASONABLE, NECESSARY, AND RELATED MEDICAL EXPENSES SHOULD BE AWARDED, the Arbitrator finds the following:

Petitioner's Exhibit #1 is a compilation of medical expenses related to Petitioner's bilateral upper extremity conditions. Based upon the Arbitrator's finding of liability, the Arbitrator finds that Petitioner shall be entitled to an award of these medical expenses.

Therefore, the Arbitrator finds that Petitioner shall be entitled to total medical expenses of \$25,701.06, with Respondent to receive credit for Section 8(j) payments of \$5,542.55 as well as direct payments of \$13,374.73 and adjustments of \$1,467.72, leaving a balance of \$5,316.06 due and owed to Petitioner subject to the limitations of the medical fee schedule of Section 8.2 of the Act and all adopted rules and regulations.

**In support of the Arbitrator's Decision as to K. WHAT AMOUNT OF TEMPORARY TOTAL DISABILITY SHOULD BE AWARDED, the Arbitrator finds the following:**

Petitioner testified that she was laid off from her employment with LCN Closers on August 6, 2009. Prior to that time, she had been working under the restrictions last placed by Dr. Snyder and no physician had lifted those restrictions. She did not obtain other employment until January 14, 2011.

In the meantime, she continued under the care of Dr. Lane and eventually Dr. Kloc for pain management injections and treatment. She remained under active medical care including advice as treatment through December 3, 2010, at which time Dr. Kloc advised her that he did not have any other treatment options for her. She did not again return to Dr. Lane until April 2011 after her symptoms had flared up again and at a time when she was performing full duty work as a CNA.

Thus, the Arbitrator finds based upon the totality of the evidence as a matter of fact and as a conclusion of law, this Petitioner is entitled to temporary total disability benefits from the Respondent herein from August 7, 2009, following her lay off through December 3, 2010, when it appears that for the time being she had reached a point of stability nowadays given the industry moniker of maximum medical improvement.. She did not seek other treatment until after she became employed and had a flare up. Thus, the Arbitrator finds that there would be no basis for awarding temporary total disability from December 3, 2010 through her employment begin date of January 14, 2011, given that she was not under medical care and had been released from care until the symptoms reappeared.

The Arbitrator orders as a matter of law as follows: Petitioner shall be awarded TTD from August 7, 2009 through December 3, 2010, a period of 69 1/7 weeks, at the minimum rate for a married individual with 3 dependents on her date of accident of \$320.00, or a total of \$22,125.71.

**In support of the Arbitrator's Decision as to L. THE NATURE AND EXTENT OF THE INJURY, the Arbitrator finds the following:**

Dr. Lane testified that Petitioner would have restrictions of no repetitive work, no use of air or vibratory tools, and no lifting over 30 to 35 pounds. Petitioner testified that she was able to find alternative employment as a CNA and that she is able to perform the job duties but does have some days that are worse with pain than others.

She testified that she continues to wear her elbow braces as needed and continues to have a pulling sensation in the tendons in her arms as well as pain. She does sometimes have difficulty bending her arms.

Based upon the greater weight of the evidence, the clinical diagnosis by many physicians of bilateral lateral epicondylitis, the medical treatment rendered of medication, physical therapy, and pain management, and the credible testimony of Petitioner as to her continued pain complaints, the Arbitrator finds as a matter of law that Petitioner is entitled to an award of 12.5% loss of use of the right arm, or a total of 31.625 weeks, and 10% of the left arm, or a total of 25.3 weeks, for the nature and extent of her injuries. Using the minimum rate of permanency of \$320.00, this is a total of \$18,216.00.

**In support of the Arbitrator's Decision as to M. WHAT AMOUNT OF PENALTIES AND FEES SHOULD BE AWARDED, the Arbitrator finds the following:**

The Arbitrator finds the Respondent made a good faith challenge to the payment of compensation by the cross examination of the worker plus the basic opinion of Dr. John Fernandez. Its clear the Petitioner's condition was multifactorial. The Arbitrator finds that Respondent's reliance on that opinion was not unreasonable. It appears from the medical expenses and Petitioner's testimony that her medical treatment was covered directly by Respondent until after her lay off. After that time, she was able to use her group insurance for medical care. Penalties are denied as a matter of law.



STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF LAKE )

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse <input type="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify <input type="text" value="Choose direction"/>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Thomas McCarville,  
Petitioner,

vs.

NO. 06 WC 09654

**14IWCC0169**

R & D Thiel, Inc.,  
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Petitioner herein and notice given to all parties, the Commission, after considering, the issue of the nature and extent of Petitioner's permanent partial disability and being advised of the facts and law affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on November 5, 2012 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

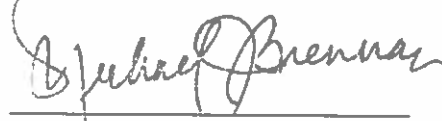
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

14IWCC0169

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$100.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: **MAR 07 2014**


o-02/19/14  
mb/wj  
52



Michael J. Brennan



Charles J. DeVriendt



Ruth W. White

ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF ARBITRATOR DECISION

**McCARVILLE, THOMAS**

Employee/Petitioner

Case# **06WC009654**

06WC009147

**R & D THIEL INC**

Employer/Respondent

14TWCC0169

On 11/5/2012, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.16% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0013 DUDLEY & LAKE LLC  
PETER SCHLAX  
100 E COOK AVE 2ND FL  
LIBERTYVILLE, IL 60048

0481 MACIOROWSKI SACKMANN & ULRICH LLP  
ROBERT T NEWMAN  
10 S RIVERSIDE PLZ SUITE 2290  
CHICAGO, IL 60606

STATE OF ILLINOIS )  
 )SS.  
COUNTY OF LAKE )

- |                                     |                                       |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/>            | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/>            | Rate Adjustment Fund (§8(g))          |
| <input type="checkbox"/>            | Second Injury Fund (§8(e)18)          |
| <input checked="" type="checkbox"/> | None of the above                     |

**14IWCC0169**

**THOMAS McCARVILLE**

Employee/Petitioner

v.

**R & D THIEL, INC.**

Employer/Respondent

Case # **06 WC 9654**

Consolidated cases: **06 WC 9147**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Edward Lee**, Arbitrator of the Commission, in the city of **Waukegan**, on **October 2, 2012**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

**DISPUTED ISSUES**

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ What temporary benefits are in dispute?  
☐ TPD ☐ Maintenance ☒ TTD
- L. ☒ What is the nature and extent of the injury?
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other \_\_\_\_\_

## FINDINGS

On **August 5, 2004** Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned **\$58,644.04**; the average weekly wage was **\$1,127.77**.

On the date of accident, Petitioner was **46** years of age, *single* with **2** dependent children.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *has* paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **\$115,672.12** for TTD, **\$0.00** for TPD, **\$14,459.70** for maintenance, and **\$0.00** for other benefits, for a total credit of **\$130,131.82**.


Respondent is entitled to a credit of **\$0.00** under Section 8(j) of the Act.

## ORDER

**THE ARBITRATOR HEREBY AWARDS 225 WEEKS OF BENEFITS, COMMENCING OCT 2, 2012 AT THE RATE OF \$567.87 PER WEEK, BECAUSE THE INJURY HAS CAUSED LOSS OF USE OF THE MAN AS A WHOLE TO THE EXTENT OF 45 % AND THE RESPONDENT SHALL ALSO PAY TO THE PETITIONER MEDICAL COSTS OF \$6,680.05.**

**RULES REGARDING APPEALS** Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

**STATEMENT OF INTEREST RATE** If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

  
\_\_\_\_\_  
Signature of Arbitrator

11/1/12  
Date

NOV - 5 2012

The petitioner had a lower back injury caused by lifting in the course of his work as a carpenter. Dr. Bernstein recommended back surgery. Dr. Ghanayem agreed, that the petitioner required lower back fusion surgery. The operation was done December 12, 2006 by Dr. Avi Bernstein.

The petitioner had a course of physical therapy at Occucare.

Dr. Barron's report of September 15, 2010 shows the fusion is technically successful and well healed. R X 3 page 3.

The petitioner does have a permanent lifting limit of 30 pounds from the floor to the waist and 20 pounds above the waist. Rx 6, Dr Vasudevan, page 7.

Petitioner's exhibit 9:

This is a bill from the Carpenter's Union Health and Welfare Fund, showing payments of \$2,625.68 for physical therapy services. These services do not appear to have been paid by respondent. Tower Automotive v Illinois Workers Compensation Commission applies, such that the amount received by the providers is the amount the respondent is required to pay. The amount awarded on this exhibit is \$2,625.68

Petitioner's Exhibit 10:

Occucare Physical therapy, 3/1/2005- 8/25/2005: this set of bills is not paid and is awarded in the sum of 2,144.32.

Rehab Physicians, (Dr Jayaprakash), \$260.00 for two visits 10/14/2004 and 11/4/2004- this is awarded.

Libertyville Imaging, 5/29/2006 MRI- this is awarded in the sum of \$1,000.00

Dr Jayaprakash, the respondent did not pay for the visits of 9/7/06 and 11/8/06 and 1/31/2007 and 2/1/2007. These were billed at \$157.00 but an adjustment of 39.25 was granted. The fee schedule would call for a payment of 76 % of the 157.00 = 119.32 or the reduced bills issued by the provided, 117.75, whichever is less. The Arbitrator awards, 4 X 117. 75 = \$ 471.00 for these bills.

The bills issued by Dr. Jayaprakash for services on and after 4/26/2007 were billed under the name of Wheaton Franciscan and all these were paid by the respondent.

Petitioner's Exhibit 11:

Dr. Painter's bill of \$350.00 for services of 12/5/2006 was paid by the respondent on 4/2/2007. P X 11, page 1. Compare, R X 10

Dr. Painter's bill of 12/5/2006 to 12/12/2006 for his assistance in lumbar fusion surgery was issued on March 19, 2007. Respondent paid for the same services, per a fee schedule and/ or PPO on 6/18/2007- amount paid

was \$3,779.27. Petitioner does not present a bill of a more recent date than the payment, the Arbitrator must conclude that the payment was the proper amount and the account is satisfied. PX 11 page 2, compare RX 10.

Midwest Diagnostics, \$16.00 for service of 12/5/2006- this was paid on 4/5/2007. P X 11, page 3, compare RX 10

Midwest Diagnostics, \$94.00 for services of 12/14/2006 does not appear to be paid, this bill is awarded. P X 11, page 4. Page 5 is just a copy of page 4.

Samar F. Najjar, M.D. \$65.00 for hospital services, this was paid by respondent on 2/8/2007 PX 11, page 6. Compare RX 10.

Advanced Radiology, date of services 12/12/2006, \$65.00 was billed 2/3/07 and was paid by respondent on 2/5/2007 for \$20.19. There is no bill more recent than the payment, the provider must have been paid correctly per fee schedule or PPO. P X 11, page 7. Compare RX 10

Park Ridge Anesthesiology, has billed \$360.00 for service 99252 on 12/12/2006 and another \$270.00 under code 99232 for services on 12/13/2006. The respondent did pay \$99.63 plus \$115.23 for the services. The fee schedule calls for \$184.20 for 99252 plus \$119.97 for 99232, the sum being \$304.17; the respondent paid, \$214.86. The amount awarded is  $\$304.17 - \$214.86 = \$89.31$ . P X 11 page 8, Compare RX 10

Park Ridge Anesthesiology charged \$180.00 for a visit by Dr. Soder on 12/14/2006; the fee schedule amount for that visit is \$89.74. P X 11 page 9

Petitioner's exhibit 11 includes duplicative bills by Dr. Painter for 12/5/2006 which respondent did pay on 4/2/2007. PX 11 pages 10- 13 are included in P X 11 page 1. Compare, RX 10.

Lutheran General, bill of 90.47 for services of 12/5/2006; this was paid by respondent on 1/5/2007. P X 11, page 14. Compare, RX 10.

Lutheran General Surgery bill of \$68,791.50; this was billed on 2/4/2007 and paid by the respondent in the sum of \$57,096.94 on 2/14/2007. It appears this bill has been resolved by a proper payment. PX 11, page 15. Compare, RX 10.

Occucare, for services of 9/17/2004 to 10/21/2004; the respondent did make 8 payments for these dates of services, totaling \$3,632.92. The payments do appear to be consistent with the amount reflected for the charges incurred on these dates. So no further payments are awarded on this account. P X 11, page 16-18. Compare, RX 10.

Occucare, for the services of 4/23/2007 to 7/27/2007; respondent made many payments on this account and appears to have covered all these charges. PX 11, page 20. Compare, RX 10.

Rehab Physicians, this is Dr Jayaprakash again, a repeat of charges included in P X 10. P X 11, page 21-22

Wheaton Franciscan, Dr Jayaprakash, 2/28/2008, this was covered by the respondent. R X 10.

The sum of unpaid bills awarded is therefore, \$6,680.05.

14IWCC0169

The petitioner has a limitation of his lifting ability such that he can lift 30 pounds from floor to waist and 20 pounds waist to overhead.

The petitioner had a vocational consultation with Gary Wilhelm.

Almost immediately, he started work with Silent Construction.

Wilhelm suggested the petitioner could from computer tutoring. It was evident from the testimony on redirect, the Respondent did offer the tutoring, petitioner did not accept it. The petitioner explained, he is working full time with Silent Construction. Petitioner does not feel that he wants to take computer tutoring on Saturdays.

Petitioner testified, he now works in Silent Construction. Petitioner says the company is owned by his nephew. Petitioner drives a pick-up truck, to go to stores and lumber yards, for supplies and takes the supplies to job sites. He takes tools to job sites. He also meets some prospective customers to discuss their projects.

Petitioner did not really test the market for what he could earn.

The family operated business could be paying less or more than the market would be.

For this reason, the wage difference formula under Section 8(d)(1) is not well proven.

The Arbitrator awards compensation in the amount of 45% MAW under Section 8(d)(2) for a lumbar spine injury with a fusion resulting in a loss of the ability to perform the duties of the usual and customary occupation. The respondent shall pay benefits commencing Oct 2, 2012 for 225 weeks at the maximum permanent partial disability rate for injuries of July 1, 2004-June 30, 2005, which is \$567.87 per week.

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse <input type="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify <input type="text" value="Choose direction"/>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jeffrey Chapman,  
Petitioner.

vs.

NO. 11 WC 45254

14IWCC0170

Nevco Scoreboard Company.,  
Respondent.

### DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by Respondent herein and notice given to all parties, the Commission, after considering, the issues of temporary total disability and prospective medical expenses and being advised of the facts and law affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on March 6, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

14IWCC0170

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

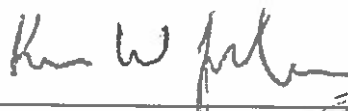
Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$13,300.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: **MAR 07 2014**

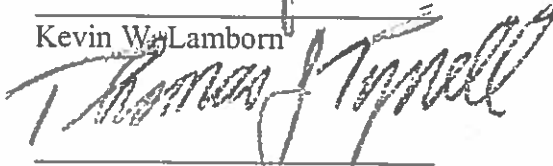
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drd/wj  
68



Daniel R. Donohoo



Kevin W. Lamborn



Thomas J. Tyrrell

ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF ARBITRATOR DECISION

CHAPMAN, JEFFERY L.

Employee/Petitioner

Case# 11WC045254

NEVCO SCOREBOARD COMPANY LLC

Employer/Respondent

14IWCC0170

On 3/6/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.12% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

1580 BECKER SCHROADER & CHAPMAN PC  
NATHAN A BECKER  
3673 HWY 111 PO BOX 488  
GRANITE CITY, IL 62040

2871 LAW OFFICES OF PATRICIA M CARAGHER  
WILLIAM E PAASCH  
1010 MARKET ST SUITE 1510  
ST LOUIS, MO 63101

STATE OF ILLINOIS )  
 )SS.  
COUNTY OF MADISON )

- |                                     |                                       |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/>            | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/>            | Rate Adjustment Fund (§8(g))          |
| <input type="checkbox"/>            | Second Injury Fund (§8(e)18)          |
| <input checked="" type="checkbox"/> | None of the above                     |

ILLINOIS WORKERS' COMPENSATION COMMISSION  
ARBITRATION DECISION

Jeffery L. Chapman  
Employee/Petitioner

Case # 11 WC 045254

v.

Consolidated cases: \_\_\_\_\_

Nevco Scoreboard Company, LLC  
Employer/Respondent

**14IWCC0170**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Edward Lee**, Arbitrator of the Commission, in the city of **Collinsville**, on **12-20-12**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ What temporary benefits are in dispute?  
☐ TPD ☐ Maintenance ☒ TTD
- L. ☐ What is the nature and extent of the injury?
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☒ Is Respondent due any credit?
- O. ☒ Other: Is Petitioner entitled to Prospective Medical Care.

## FINDINGS

On 10-26-11, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned \$36,440.82; the average weekly wage was \$700.79.

On the date of accident, Petitioner was 49 years of age, *married* with 0 child under 18.

Petitioner *has not* received all reasonable and necessary medical services.

Respondent *has not* paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of \$            for TTD, \$            for TPD, \$            for maintenance, and \$            for other benefits, for a total credit of \$            .

Respondent is entitled to a credit of \$            under Section 8(j) of the Act.

## ORDER

The Arbitrator finds Petitioner's condition of ill-being, severe spinal stenosis at L3-4 and L4-5 with unstable spondylolisthesis at L4-5, is causally connected to his work injury of October 26, 2011. The Arbitrator bases this opinion on the testimony of Petitioner and Dr. Kennedy. The Arbitrator finds Dr. Kennedy's testimony to be more credible than that of Dr. Lehman.

The Arbitrator finds the prospective medical treatment proposed by Dr. Kennedy, a decompression and fusion at L3-4 and L4-5, to be reasonable and necessary and causally related to Petitioner's October 26, 2011 work accident. Therefore, the Arbitrator orders Respondent to approve and pay for the proposed medical treatment, including appropriate surgical intervention, to Petitioner's lumbar spine.


The Arbitrator finds that Respondent shall pay reasonable and necessary medical services for Petitioner's severe spinal stenosis at L3-4 and L4-5 with unstable spondylolisthesis at L4-5, pursuant to the medical fee schedule of \$15,661.71 to Multi-Care Specialists and \$2,400.76 to Professional Imaging, as provided in Section 8(a) and 3.2 of the Act. The Arbitrator bases this on the testimony of Dr. Kennedy.

Respondent shall pay Petitioner temporary total disability benefits of \$467.19/week for 28 and 1/7 weeks, commencing 6/7/2012 through 12/20/2012, as provided in Section 8(b) of the Act. Petitioner's treating physicians have held him off of work from the date of accident to the time of trial. Respondent has not accommodated or offered to accommodate work within the restrictions recommended by the IME doctor. The parties stipulated that Petitioner was paid all owed TTD benefits from the date of accident until 6/6/2012; therefore this award covers the period of TTD after 6/6/2012 and is not offset by the amounts paid to Petitioner prior to 6/7/2012.

14IWCC0170

**RULES REGARDING APPEALS** Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

**STATEMENT OF INTEREST RATE** If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

  
\_\_\_\_\_  
Signature of Arbitrator

3/4/13  
Date

MAR 6 - 2013

Jeffery L. Chapman vs. Nevco Scoreboard Company, LLC  
11-WC-045254

The Arbitrator hereby finds the following facts:

Petitioner, Jeffery Chapman, is a 50 year-old production worker for Respondent, Nevco Scoreboard Company. On October 26, 2011, Petitioner injured his low back while lifting a piece of sheet aluminum into a machine. Petitioner described moving the aluminum from his left to right and twisting his back. Petitioner testified that he had an immediate shooting/stabbing pain in his lower left back. Shortly after the incident, he began having symptoms down his left leg.

Petitioner first sought medical treatment from Mark Eavenson D.C. in Granite City, Illinois. Px3at1. The history of injury reported to Chiropractor Eavenson was: "[Petitioner] was sliding a piece of material that weighed 60 to 80 pounds into a machine in a twisting type motion. He felt a sharp stabbing pain in his lower back and then began having pain in his left lower extremity." Px3at1. The physical examination demonstrated a positive straight leg test on the left and a negative straight leg test on the right. Id. Petitioner was diagnosed with lumbar disc protrusion with left lower extremity radiculitis. Following that visit, Petitioner was held off of work and an MRI of the lumbar spine was ordered. Id. The medical records of Chiropractor Eavenson indicate, and Petitioner testified, that Petitioner had been treated for low back pain prior to October 26, 2011.

Petitioner underwent an MRI of his lumbar spine on October 27, 2011 at Imaging Partners of Missouri. Px4.

On November 3, 2011, Petitioner began treating with Dr. David Kennedy, a neurosurgeon in St. Louis, Missouri. Px1at1. Dr. Kennedy is a board certified neurosurgeon, with his practice confined strictly to the spinal cord. Px7at6. He performs between 250 and 300 lumbar surgeries per year. Px7at7. By history, "[petitioner] was lifting a piece of metal into a machine and while twisting to move this he had a sharp pain in the left lower back area, and then it began to radiate into the left leg associated with numbness and tingling." Px7at8. Dr. Kennedy interpreted the MRI as showing stenosis at L4-5, with L4 slipped forward of L5, that was producing pretty significant central stenosis, as well as foraminal encroachment on both sides. Px7at9. Following that visit, Dr. Kennedy recommended epidural steroid injections and physical therapy. Petitioner was held off of work. Id.

At the direction of Dr. Kennedy, Petitioner underwent three epidural steroid injections into his lumbar spine. Px5.

Following the last injection, Petitioner saw Dr. Kennedy on February 23, 2012. Px7at11. The records indicate and Petitioner testified that he did not receive satisfactory relief from these injections. At this time, Petitioner reported he was starting to experience numbness in his feet if he walked or stood for more than a few minutes. Id. The records and testimony show that Petitioner's symptoms progressed from low back pain with left leg symptoms to low back pain with bilateral leg symptoms. Believing Petitioner had failed conservative treatment, Dr. Kennedy ordered a myelogram of Petitioner's lumbar spine. Px7at11.

Petitioner underwent a myelogram on March 7, 2012. Px6. Dr. Kennedy explained the significant findings from the myelogram:

"The notable findings that L-4 were still slipped forward on L-5, but it also moved between flexion and extension, so that there is actual mechanical instability at that level, and associated with the instability was severe spinal stenosis.

In other words, his spinal canal was reduced by about 90 percent, that's why he was getting the pain with walking or standing for [more] than a few minutes.

There was also some fairly significant stenosis at L3-4, not as bad as L4-5, but still very significant. Those findings were verified on the CT portion of the study, wherein the L4-5 level was severely stenosed, really to a critical level. And again, there was also significant stenosis at L3-4, not as bad as at L4-5, but definitely both of those levels, in light of his symptoms, require decompression and fusion." Px7at12-13.

Petitioner's subjective complaints were noted to be consistent with the myelographic findings. Px7at13. Dr. Kennedy recommended a decompression and fusion at L3-4 and L4-5. Id. At the time of his deposition, Dr. Kennedy testified Petitioner's diagnosis is severe spinal stenosis at L3-4 and L4-5 with unstable spondylolisthesis at L4-5 causing his leg pain. Px7at17.

Petitioner testified that he had a prior episode with low back pain with minor symptoms into his left leg. Prior to the October 26, 2011 injury he very rarely had numbness down to his left foot. Prior pain complaints were successfully treated with physical therapy and only two lumbar injections; Petitioner declined a third injection because he had satisfactory resolution of his symptoms. Further, Petitioner had never been referred for a surgical consult before. Dr. Kennedy testified that it is unlikely that Petitioner had instability between L4-5 associated with his prior lumbar condition, because instability would not have stabilized with injections. Px7at32.

Petitioner testified that initially after the October 26, 2011 injury he had symptoms in his left leg. His symptoms progressed over the next several months to include symptoms in his bilateral legs. Petitioner testified that his symptoms since the October 26, 2011 injury are substantially more severe than any prior lumbar issues he has experienced. Now he suffers from persistent left leg pain, numbness, and tingling. Also he now has substantial and persistent left foot numbness. Prior to this injury Petitioner had never experienced right leg symptoms. Now he has symptoms in his right leg and foot, but they are much less severe than the symptoms in this left leg and foot.

Dr. Kennedy testified he believes Petitioner's October 26, 2011 work injury aggravated his underlying lumbar condition sufficiently to cause the symptoms he is currently experiencing. Px7at17. Further, Dr. Kennedy testified the mechanism of injury was consistent with this type of aggravation. Px7at18. Specifically, Dr. Kennedy opined the instability between L4-5 was acutely caused by the work injury of October 26, 2011, which in turn is aggravating Petitioner's underlying stenosis. Px7at30.

Dr. Kennedy opined the work injury caused instability at Petitioner's L4-5. Px7at37-39. He based this opinion on the diagnostic studies, Petitioner's prior and current medical history, and the progression of symptoms. Instability superimposed on degenerative stenosis can cause rapid progression of symptoms. Px7at39. Symptom progression caused by degenerative factors alone occurs over a much longer period of time. Id. Therefore, Petitioner's quick progression of symptoms, to include in bilateral legs, is explained by the acutely caused instability.

Dr. Kennedy testified that all of the treatment, to date, has been reasonable and necessary to cure or relieve Petitioner's low back condition. Additionally, the recommended surgery is reasonable and necessary. Px7at14.

Petitioner testified that he continues to have substantial daily symptoms. He is aware of the recommendation for surgery by Dr. Kennedy and wishes to proceed. Petitioner has been held off of work since the date of accident, until the present. Respondent has not offered light duty work within the IME doctor's restrictions.

Dr. Richard Lehman performed an Independent Medical Examination on June 7, 2012. Dr. Lehman testified that he treats patients for lumbar conditions conservatively and refers surgical lumbar patients to a neurosurgeon or spine specialist. Rx1at24. Following the visit, Dr. Lehman opined that Petitioner should have a permanent 50 lbs. lifting restriction and should avoid any rotational stress lifting with the lumbar. Rx1at27-28. Regarding surgical treatment, Dr. Lehman believes Petitioner would be best served by a decompression and fusion from the L2 to the S1 levels. Rx1at41.

The Arbitrator finds the following:

1. The Arbitrator finds Petitioner's condition of ill-being, severe spinal stenosis at L3-4 and L4-5 with unstable spondylolisthesis at L4-5, is causally connected to his work injury of October 26, 2011. The Arbitrator bases this opinion on the testimony of Petitioner and Dr. Kennedy. The Arbitrator finds Dr. Kennedy's testimony to be more credible than that of Dr. Lehman.
2. The Arbitrator finds the prospective medical treatment proposed by Dr. Kennedy, a decompression and fusion at L3-4 and L4-5, to be reasonable and necessary and causally related to Petitioner's October 26, 2011 work accident. Therefore, the Arbitrator orders Respondent to approve and pay for the proposed medical treatment, including appropriate surgical intervention, to Petitioner's lumbar spine.
3. The Arbitrator finds that Respondent shall pay reasonable and necessary medical services for Petitioner's severe spinal stenosis at L3-4 and L4-5 with unstable spondylolisthesis at L4-5, pursuant to the medical fee schedule of \$15,661.71 to Multi-Care Specialists and \$2,400.76 to Professional Imaging, as provided in Section 8(a) and 8.2 of the Act. The Arbitrator bases this on the testimony of Dr. Kennedy.
4. Respondent shall pay Petitioner temporary total disability benefits of \$467.19/week for 28 and 1/7 weeks, commencing 6/7/2012 through 12/20/2012, as provided in Section 8(b) of the Act. Petitioner's treating physicians have held him off of work from the date of accident to the time of trial. Respondent has not accommodated or offered to accommodate work within the restrictions recommended by the IME doctor. The parties stipulated that Petitioner was paid all owed TTD benefits from the date of accident until 6/6/2012; therefore this award covers the period of TTD after 6/6/2012 and is not offset by the amounts paid to Petitioner prior to 6/7/2012.

Dated: 3/4/13

  
Honorable Ed Lee

